

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
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(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That carrier unjustly assessed Carman P. W. Frisch a five-day deferred suspension on September 12, 1975, as a result of investigation held August 22, 1975.
2. That carrier be ordered to remove five-day deferred suspension from the service record of Carman P. W. Frisch.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

After investigative hearing, Claimant was assessed a five-day deferred suspension because of his responsibility in causing damage to a private vehicle while operating a Carrier motor vehicle.

The Organization seeks to have the disciplinary action removed from the Claimant's record, because of the Carrier's failure, in the view of the Organization, to comply with that portion of Rule 32 which reads:

"If stenographic report of investigation is taken, the committee shall be furnished a copy."

Definition of "the committee" is found two sentences before the sentence quoted above in the first paragraph of Rule 32, where reference is made to "the duly authorized local committee". Carrier had been advised previously as to membership of the "committee".

Carrier promptly furnished a copy of the hearing transcript to an Organization representative who appeared on behalf of the Claimant at the hearing. Thus the Organization received a copy of the transcript in timely fashion, but -- as a technical point -- this is not the same as the Carrier furnishing a copy to the committee. After the claim had been initiated, Carrier eventually furnished the "committee" with a copy of the transcript.

The Carrier can be found to be remiss in its normal function of supplying -- without special request -- a copy of the transcript to the committee. The Carrier did, however, promptly furnish a copy to an Organization representative. Nor do the rules set a time limit on furnishing the transcript, although the Board believes that timely furnishing of the transcript is implied (in order to assist the Organization in determining whether to file a claim).

Technical errors such as this may not simply be swept aside altogether, but the Board must examine whether the technicality here involved in any way prejudiced the rights of the Claimant or the Organization. In this instance, the Board finds no such prejudice, as the claim went forward in normal fashion as if the committee had a copy of the transcript in hand (which was eventually the case). The misdirecting of the initial transcript copy did not affect the charge against the Claimant nor the Organization's defense thereof.

In its defense of this point, the Organization relies on Awards Nos. 1978 (Stone), 3154 (Whiting), and 5184 (Harwood). In all these cases, however, the Carrier was shown never to have supplied a copy of the transcript -- quite a different matter than the present instance.

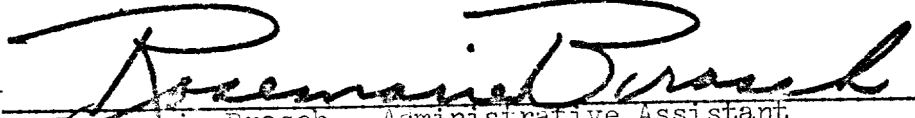
The Board finds the hearing was conducted in a fair and impartial manner, with no procedural error as to the foreman's several roles in the disciplinary action. The offense was of a relatively minor nature, involving an employee of long service. The Carrier's disciplinary action, however, was also of minimal severity, and the Board finds no basis for disturbing it.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April, 1978.