

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That the Chicago and North Western Transportation Company violated the terms of Article V of the August 21, 1954 Agreement when Director Labor Relations Fremon failed to notify the General Chairman of the reasons for disallowing his appeal contained in letter dated June 12, 1979.
2. Passenger Truck Repairman Rufus Purdie was unjustly assessed fifteen (15) days actual suspension and made to service an additional fifteen (15) days which had been previously deferred, on March 6, 1979.
3. Passenger Truck Repairman Rufus Purdie was erroneously charged for his responsibility for failing to report for duty at starting time on February 2, 7, 8, 13 and 14, 1979.
4. That the Chicago and North Western Transportation Company be ordered to compensate Passenger Truck Repairman Rufus for all time lost plus 6% annual interest on all such lost wages during the time held out of service, and to make him whole for all benefits that are a condition of employment in accordance with Rule 35.

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.

On February 2, 7, 8, 13 and 14, 1979, Claimant was late for work. He maintains that he left home at least one hour early on those dates, but was still late due to severe winter weather and the resulting overcrowding of public transportation. He was 22 minutes late on the 2nd, 8 minutes on the 7th, 19 minutes on the 8th, 6 minutes on the 13th, and 33 minutes on the 14th. After investigating the matter, the Carrier suspended the Claimant for 15 days, which activated an earlier deferred 15 day suspension.

The facts in this case are not in dispute, since the Claimant admits being late as outlined above. The focal issue is whether there were mitigating circumstances sufficient to justify his tardiness.

A secondary issue concerns an August 1, 1979 letter from W. J. Fremon, Director of Labor Relations (Non-Operating) for the Carrier to Patrick J. Murphy, General Chairman of the Carmen's Organization. In this letter Fremon denied the instant claim with the following as the exclusive reasoning set forth:

"While my files at this time are not complete and I am developing additional facts, based on information in my possession it is necessary (that this case) be denied for lack of support of schedule rules and agreements."

The Organization claims Fremon's letter is not in compliance with Article V, Section 1 of the August 1954 Agreement, which states in part:

"... Should any such grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance."

Fremon's August 1, 1979 letter does, in a very loose sense, cite "lack of support of schedule rules and agreements" as reasoning for disallowing the claim. Such a general response, however, does little to inform the Organization and the Claimant as to why the claim was disallowed, and does not seem to comply with the intent of Article V, Section 1 of the August 1954 Agreement between the parties. It appears that the parties who negotiated the language of Article V contemplated that the Carrier's notification should provide the Organization and Claimant with information as to where the claim was (in the Carrier's view) defective.

Moreover, the Board has concluded from careful study of the record in this matter that the Claimant made reasonable, good faith attempts to report for work on time on the days in question, and that his failure to do so was through no fault of his own. The Winter of 1979 was one of the most severe in recent decades, and the Claimant's reference to unusually slow and overcrowded public transportation is supported by other evidence in the record. His testimony that he left his home a minimum of one hour early on each of the 5 days is uncontroverted.

Furthermore, the Claimant testified during the investigation on the property that his Foreman, Pete Mauro, implicitly acknowledged that the bad weather was a reasonable excuse for his tardiness. Mr. Mauro did not testify during the investigation. And finally, the record contains no evidence that the Claimant was disciplined or warned in any way after his tardiness on the 1st day (February 2) of the 5 days in question. The Carrier apparently waited until the Claimant had been tardy five times over the course of about twelve days before considering discipline. Such action on the Carrier's part was capricious, in that it came down suddenly and unpredictably on the Claimant.

Accordingly, the Board has concluded that the Claimant was unjustly assessed fifteen (15) days suspension. The Carrier shall make the Claimant whole for all time lost due to the suspension and for all benefits except the 6% interest.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd of July, 1982.