

The Second Division consisted of the regular members and in addition Referee Robert O. Harris when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Union Pacific Railroad Company (hereinafter "carrier") violated Rule 31 of the Controlling Agreement between Transportation Communications International Union - Carmen's Division and Missouri Pacific Railroad Company (Union Pacific System) (revised September 1, 1981) on May 26, 1989, when it suspended carman Carl Hickerson (hereinafter claimant) for thirty (30) days on account of alleged violation of General Rule 607(1) - 607(2), Rule 4000, Blue Flag Rule 4026 and General Rule B.

2. That the carrier violated the time limit rule of Rule 31(b) by failing to conduct the investigation within twenty (20) days of the alleged occurrence; violated Rule 31 by failing to apprise claimant of the precise charge; violated Rule 31(f) by failing to furnish to the union, before the investigation, copies of all documents proposed to be used at the investigation; violated Rule 31 in failing to afford the claimant fair and impartial investigation; violated Rule 31, in refusing to allow the union to tape record the investigation; violated Rule 31 in failing to allow the union to call D. K. Barnes as a witness; violated Rule 31 when discipline was assessed on the basis of General Rules 607(1) and 607(2) when these Rules were not cited in the notice of investigation or mentioned during the investigation; and violated Rule 31 because the evidence in the investigation showed no rule violation by claimant and no imposition or discipline of any kind was justified.

3. That accordingly, the carrier be ordered to clear the record of claimant Carl Hickerson of the above charges; that he be allowed compensation for 30 days and all other time lost as a result of his unjust suspension; that he be made whole for vacation rights; loss of health and insurance benefits, pension benefits including Railroad Retirement and unemployment insurance, and any other benefit of employment he would have earned during the period of his unjust suspension; and that the carrier allow claimant an additional amount of 6% per annum compounded annually on the anniversary date of the claim.

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 employes 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.

Claimant is employed as a car inspector at Carrier's Lesperance Street Yards, St. Louis, Missouri. On May 26, 1989, Claimant was assessed a thirty-day actual suspension for removing the blue flag from Track 41 at approximately 3:00 P.M., April 2, 1989, while carmen were still working in the track. Claimant was charged with violations of Blue Flag Rule 4026 and General Rule B and Rule 4000 on April 24, 1989. The Hearing was originally set for May 1, but was postponed at the Organization's request on April 26 until May 17, 1989.

It is the contention of the Organization that Rule 31 which requires a hearing within 20 days of the date of the alleged violation was violated. It is the Carrier's contention that the exception to the 20-day rule where the alleged offense involves serious personal misconduct is applicable and so the matter was handled in a timely manner.

Rule 31 reads in pertinent part:

"(a) An employe covered by this Agreement who has been in service more than 60 days shall not be disciplined or dismissed without first being given a fair and impartial investigation by an officer of the railroad. An employe may be withheld from service pending investigation in major violation cases.

(b) At a reasonable time prior to the investigation, the employe shall be apprised of the precise charge against him and the time, date and place set for investigation. Such investigation shall be held within 20 days from the date of the occurrence(s) on which the charges are based except, in cases of serious personal misconduct, the investigation will be held within 20 days from the date the employer's supervisory officer has knowledge or reasonably should have had knowledge of the occurrence(s). If the Carrier fails to hold the investigation within the time limits set forth or the date(s) to which postponed, the record of the employe

shall be cleared of the charge(s). The employee shall have a reasonable opportunity to secure the presence of necessary witnesses and representative, if he so desires. A copy of the notice directing the employee to report for investigation shall be furnished to the Local Chairman of the craft involved, but failure to furnish the Local Chairman with copy of the notice shall not constitute a procedural error sufficient to void the investigation or subsequent disciplinary action. Requests for postponement of an investigation by the employee, his duly authorized representative or the Carrier will be granted for reasonable purposes."

Serious personal misconduct has generally been construed to mean theft or physical action taken against another employee. The Carrier has cited no cases where it has been applied to a simple rule violation. Yet if that exception is not applicable, the charges against Claimant were not brought in a timely fashion since the Carrier admits that the matter was delayed while the Local Manager was on vacation.


The purpose of Subsection (b) of Rule 31 is to insure speedy action on the part of the Carrier. The mere fact that a Local Manager is on vacation is not sufficient reason to delay charges being filed against an individual employee, especially in a case such as this where the facts were in dispute. The alleged violation of the Blue Flag Rule is not within the definition of serious personal misconduct and the charges against Claimant must be dismissed. All record of the discipline will be expunged from Claimant's record and he will be made whole for lost wages and other benefits. The request for interest is denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1992.