NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26485
THIRD DIVISION Docket Number MW-25972

Irwin M. Lieberman. Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation
(Former Penn Central Transportation Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The discipline ('time off from August 19, 1980 through September 16, 1980, to serve as discipline') imposed upon Bus Driver R. J. Riffle for not having, in his possession and wearing a hard hat and for alleged insubordination on August 19, 1980 was without just and sufficient cause and in violation of the Agreement (System Docket 735).

(2) The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant herein was charged with not having his hard hat on or in his possession on August 19, 1980, and subsequently, on the same morning in the same context, being insubordinate to his Supervisor.

The record of the Investigation, held on September 15, 1980. produced evidence including admissions by Claimant, which supported Carrier's determination that he was guilty of both charges. Claimant had been held out of service from August 19th until September 16th, when he was told to return to his position as a Bus Driver with a rail gang. Subsequently, on April 24, 1981, (during which period Claimant had been on layoff for almost six months) Carrier issued its notice of discipline which held that the period held out of service would constitute the discipline for the infractions. The record also indicates that Claimant had been informed at the conclusion of the Investigation that the period out of service would be applied to the discipline for the infraction.

Organization argues that the discipline was uncalled for in this case and clearly excessive. Additionally, it is urged that the discipline decision was untimely and thus Carrier waived its right to apply any discipline.

Carrier argues the record discloses that Claimant was guilty of the charges. Additionally, Carrier maintains that insubordination is a major offense and could well have resulted in termination. With respect to the date of the issuance of the letter of discipline, Carrier states that Rule 5-E-l contains no time limits and moreover Claimant had been informed of the discipline orally immediately after the Trial.

As the Board views it, the measure of discipline in this case was warranted by the insubordinate behavior of Claimant, and should not be disturbed, in view of his guilt. The only question is the length of time taken by Carrier in issuing its letter of discipline. Rule 5-E-l provides:

> "5-E-l. Notice of discipline. (a) If discipline is to be imposed following the trial and decision, the employe to be disciplined shall be given written notice thereof at least 15 days prior to the date on which the discipline is to become effective, except that in cases involving major offenses discipline may be made effective at any time after decision without advance notice.
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> (b) If the discipline to be applied is suspension, the time the employe is held out of service prior to the serving of the notice of discipline shall be applied against the period of suspension."

While it is true that there is no specific time frame required by the Rule cited, the length of time elapsing in this dispute was far too long. In this particular case, in view of Claimant's layoff he suffered no loss of rights as a result of Carrier's tardiness, but this lengthy hiatus should not prevail in the future.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.