

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: ((Transportation Communications International Union
(Gateway Western Railway

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10578) that:

1. Company violated the agreement between the parties when it wrongfully dismissed Clerk Walt Francz, Kansas City, MO., from service of the Company on July 17, 1990.

2. Company shall now be required to compensate Clerk Walt Francz for all time lost, beginning June 29, 1990, when held out of service pending investigations, July 12, 1990, and subsequently dismissed following investigation, and his record be cleared of all charges as a result of the investigation."

FINDINGS:

The Third 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.

The circumstances in this case are directly related to the situations involved in Third Division Awards 29390 and 29391 which are addressed separately, but must be mentioned here to give substance and continuity to the series of events and arguments which precipitated the dismissal of Claimant effective July 17, 1990.

The situation involved in Award 29390 occurred on June 18 and 19, 1990. The situation involved in Award 29391 occurred on June 19, 1990. On June 27, 1990, Claimant reported for duty at 11:00 P.M. At approximately 11:05 P.M., he was called in to the office of the Supervisor of Operations where he was presented with a notice of Investigation in connection with the

June 18 and 19, 1990 incidents. He was instructed to signify his receipt of the notice by signing and returning one copy of the notice to the Supervisor. Claimant took the notices and left the room. He returned to the Supervisor's office at approximately 11:10 P.M., returned the notice to the Supervisor and informed the Supervisor that he would not sign it. He also indicated at that time that he was marking off "sick." He then left the property.

Following this colloquy, Claimant was notified in writing on June 29, 1990, that he was being withheld from service and that an Investigation was scheduled on a charge of insubordination for refusing to comply with a superior officer's instructions and for marking off duty under false pretenses. The Investigation was held as scheduled and Claimant was subsequently notified of his dismissal on July 17, 1990.

There are several procedural arguments advanced by the Organization in their presentation of this case to our Board. They contend (1) that the Hearing Officer played multiple roles in the handling of this case to the detriment of the Claimant; (2) that Carrier violated the time limit provisions of the discipline Rule because the Hearing was not held within ten days of the notice of Investigation; (3) that predetermination of guilt by Carrier existed because Claimant was withheld from service pending Investigation; (4) that Carrier erroneously made reference to Claimant's prior record in the notice of discipline; and, (5) that the Carrier made no attempt to rehabilitate the Claimant.

From our review of the record, it is apparent that the contentions relative to multiple roles of the same officer, predetermination of guilt, reference to prior record and Carrier's failure to rehabilitate are all arguments which were made for the first time before this Board. Therefore, they are dismissed.

The alleged time limit violation was raised during the on-property handling and was discussed extensively by the parties. It is the conclusion of this Board from the several exchanges of correspondence which are part of the case record that there was an understanding reached by the parties to extend the allowable time limits to accommodate the holding of three separate investigatory Hearings, i.e., this case, and those cases in Award 29390 and Award 29391, on the same date, July 12, 1990. There is un rebutted evidence in the file that the Local Committeeman who was designated by the Organization to handle matters requiring local discussion was contacted relative to the time limit extension and his concurrence was given. We, therefore, in this particular case as well as in Awards 29390 and 29391 find that the investigatory Hearings were timely held.

On the merits, it is our determination that Claimant made a mistake when he refused to comply with the Supervisor's instructions to sign for the Hearing notice. His contention relative to his meaning of the word "understand" is misdirected and far-fetched. Claimant compounded his mistake when he belatedly marked off sick after the fact of refusing to acknowledge receipt


of the Hearing notice. However, we do not believe that these derelictions were so egregious as to warrant permanent dismissal. Claimant was offered reinstatement to service by the Carrier on January 15, 1991. For reasons best known to him, he refused to accept the offer of reinstatement. We will, therefore, order that his dismissal from service be converted to a 3-month (90 day) suspension to be measured from June 29, 1990, to and including September 26, 1990. Claimant is to be paid for all time he may have lost commencing September 26, 1990 through January 15, 1991, less any amount earned in any other employment.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.