

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36334
Docket No. MW-36580
02-3-01-3-83**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. B.E. Thomas for his alleged violation of Rule G and Safe Way Rule 21 was without just and sufficient cause and in violation of the Agreement [System File D21916300/12(00-0275)].**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. B. E. Thomas ‘***should be immediately reinstated, paid for all time lost and have his record cleared of all charges.’”**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

The Claimant began working for the Carrier as a Trackman on September 9, 1981. On April 17, 1998, he tested positive for cocaine metabolites. He was offered and accepted a Rule G bypass in lieu of an Investigation. The Claimant returned to work, subject to follow up testing. On August 9, 1999, the Claimant again tested positive for cocaine

metabolites. Because it was his second confirmed positive test since 1993, he was charged with violation of Rule G and Safe Way Rule 21 and directed to attend an Investigation. The date of Hearing was postponed and the Investigation was ultimately held on March 23, 2000.

Following the Investigation, the Claimant was dismissed from service by letter dated April 11, 2000. The dismissal has been appealed on the basis that Rule 25 was violated in that the alleged notice of discipline and transcript of the Investigation were not timely given to the Claimant's representative. Rule 25 (f) provides in pertinent part as follows:

"RULE 25 - DISCIPLINE, HEARINGS AND APPEALS

* * *

- (f) Notice of discipline must be given within twenty (20) days following the close of the hearing. Copy of the transcript shall be given to the employee and two (2) to his representative."

The Organization contends that the foregoing Rule provision is clear and unambiguous. In this instance, it argues, the Carrier was required to furnish the notice of discipline along with two copies of the transcript to the Claimant's representative within 20 days after the March 23, 2000 Hearing; that is, on or before April 12, 2000. According to the Organization, however, the General Chairman did not receive the notice of discipline and a transcript copy until April 24, 2000. Having exceeded the time limits prescribed by the parties under Rule 25 (f), the Organization maintains that the claim must be sustained in its entirety, consistent with prior Awards that have addressed this subject.

The Board reviewed the record and we find that there are assertions and counter assertions as to when the Claimant's representative was sent a copy of the transcript. The Carrier contends that it was mailed on April 11, 2000, along with the notice of discipline. Although the Carrier alleges the documents were sent by certified mail, it concedes that the copy of the receipt for certified mail cannot be located. The Organization argues that the transcript and notice of discipline were not received by the General Chairman until April 24, 2000, but it offered no proof of receipt on that date.

We find it unnecessary to address this factual conflict, however. The language of Rule 25 (f) is clear and unambiguous, but its meaning is not as the Organization claims. It does not require the Carrier to provide the Claimant's representative with the notice of discipline, nor does it set time limits for mailing copies of the transcript. In that respect,

this Agreement differs from those interpreted in other cases cited by the Organization. Compare, Special Board of Adjustment No. 924, Award 20 (the Carrier did not comply with ten-day time limit to provide transcript) and those cases where it was held that the Carrier did not provide a transcript at all (Third Division Award 32963 and Public Law Board No. 5439, Award 10).

The Board must interpret and apply the language of the Agreement as it is written. Had the parties intended the interpretation now sought by the Organization, they would have crafted Agreement language to so provide. In this case, the Organization does not dispute the fact that the notice of discipline was timely sent to the Claimant. In addition, the notice and the transcript, according to the Organization's own admission, were received by the General Chairman, albeit not until April 24, 2000. The Carrier's actions were sufficient to comply with the Rule requirements and to enable the Organization to perfect the Claimant's contractual right of appeal.

Rejecting as we do the contention that there was a procedural violation in this case, the Board, after careful examination of the record, finds substantial evidence in support of the charges and concludes that the dismissal was fully warranted. Accordingly, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of December 2002.