

The Third Division consisted of the regular members and in addition Referee Mary H. Kearney when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10181) that:

1. Carrier violated the terms of the current Agreement, particularly Rule 21, when under date of April 1, 1985, it issued the supreme penalty of dismissal as a result of a formal investigation which was held in an untimely manner on March 25, 1985, and

2. Carrier shall now be required to compensate the Claimant A. J. Trejo for all time lost as a result of such discipline and that his record be cleared of the alleged charges and that he be paid for any monies he may have spent for health benefits he would have otherwise received under the group policies he was covered by prior to his dismissal."

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.

On Saturday, March 16, 1985, the Claimant was employed as a Passenger Service Representative at the Carrier's Chicago Terminal. An hour before his 2:30 P.M. assignment Claimant called the Stationmaster to report that he would be thirty minutes late because his wife was delayed on her return from work and he could not leave his child unattended. Claimant reported for work 45 minutes late with his child in tow.

The Stationmaster is a member of the American Railway and Airway Supervisors Association, a Division of TCU and a Supervisor to whom Claimant was required to report his tardiness and absenteeism. The Supervisor left the Manager of Suburban Administration a written message noting Claimant's late arrival, which the Manager received on Monday, March 18, 1985. Subsequently, Claimant was directed to attend a formal investigation on March 25, 1985,

concerning the charge that he had failed to properly protect his assignment on March 16, 1985. After the hearing the Carrier notified the Claimant that he was dismissed from service.

The first procedural issue before the Board concerns whether the time limit under Rule 21 for holding investigations began to toll on March 16, 1985, when the Stationmaster learned that Claimant was late for his assignment or on March 18, 1985, when the Manager first learned of Claimant's tardiness.

The relevant portion of Paragraph "a" of Rule 21 provides:

"The investigation shall be held within seven calendar days of the alleged offense or within seven calendar days of the date information concerning the alleged offense has reached his supervisory officer."

(Underscoring added)

If, as the Organization contends, the Stationmaster is a "supervisory officer" as contemplated by this Rule then the investigation, which convened nine days after the Stationmaster first learned of the alleged offense, was untimely.

This is not a matter of first impression for the Board. In Third Division Award 25888, a case involving the same parties, similar facts and an interpretation of the identical language in Rule 21 the Board found that an employee with "some level of supervisory responsibility" over the Claimant and who, like Claimant, was covered by the Clerk's Agreement, did fit the definition of supervisory officer contemplated by Rule 21. The circumstances upon which this finding is based are identical to the ones presented to the Board in the instant case. Therefore, since there is not a sufficient showing that the decision in Third Division Award 25888 was patently erroneous, the Board is bound by precedent. (See Third Division Awards 19354 and 10911.) Accordingly, the Board finds that the Stationmaster is a "supervisory officer" within the meaning of Rule 21 and the investigation held nine days after he learned of the alleged offense was untimely.

With respect to the question of remedy the Carrier contends that a finding of untimeliness should not mandate a complete reversal of the discipline. In support of this position the Carrier cites Third Division Award 26309. Analysis of that decision persuades us that the approach taken therein was limited to the peculiar facts of that case and is without precedent value herein. In contrast, Third Division Award 25888, relied on by the Organization, is clearly on point. Therein, after finding a violation by the Carrier of the time limits expressed in Rule 21 the Board concluded that "in the longstanding practices of this Board, such violation... causes us to sustain the claim." In light of our finding that the hearing was not held in compliance with the time limits of Rule 21 the Claim must be sustained without regard to its merits.

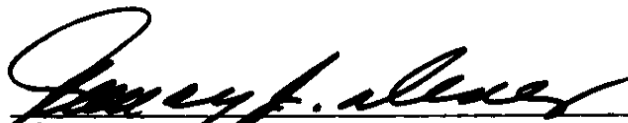
The Carrier shall compensate Claimant for all time lost as a result of the discipline assessed and Claimant's record shall be appropriately cleared of the charges. However, Claimant's Claim regarding health benefits shall be denied and his Claim in that regard shall be sustained only to the extent that he is entitled to relief under the TCU Agreement, 1981, Article V, Section 5.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1989.