PUBLIC LAW BOARD NO. 1464

Award No. 62

Case No. T-106-75

Parties United Transportation Union (T)

to and

Dispute The Boston and Maine Corporation, Debtor

STATEMENT OF CLAIM:

"Appeal from discipline of six (6) marks against Conductor F. D. Patenaude."

FINDINGS:

The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated November 20, 1974, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearings held.

Claimant, on November 10, 1974, was called for the flagman's assignment on Trains SJ-1/JS-2, Springfield-White River Junction-Springfield. He failed to protect or cover that vacancy. Claimant, on November 11, 1974, accepted responsibility for his failure; signed a waiver of investigation, and received six (6) demerits as discipline for his failure.

The Employees appeal therefrom on the basis that custom and practice of application of Rule 10, of the Conductor's Agreement, "Discipline", precludes Claimant signing a waiver of an investigation without such being approved or countersigned by the Local Chairman or General Chairman of the United Transportation Union. Further, it is alleged

that Claimant, pursuant to the holding in NLRB v. J. Weingarten, Inc., by the United States Supreme Court, decided February 19, 1975, was entitled to union representation at an investigatory interview that might result in discipline.

The Board finds that the Employee's position here is not well founded. The "Weingarten, Inc." holdings cannot be held to be applicable here. There, the National Labor Relations Board had held that the employer's denial of an employee's request that his union representative be present at an investigatory review which the employee reasonably believed might result in disciplinary action, constituted an unfair labor practice in violation of Section 8(a) (1) of the National Labor Relations Act. Section 8(a) (1) therein provides that it is an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 157 of the title." 29 U.S.C. 158 (a) (1). Claimant, as well as the Parties to the instant proceeding, is not covered by the National Labor Relations Act. Rather, all the parties here come under the provisions of the Railway Labor Act, as amended. A truism applicable here is, that which may be true under the NLRA may not be true under the RLA. Notwithstanding and despite the foregoing, Claimant never asked for a union representative so that the premise of "Weingarten", even on its face, could not be therefore raised, not to mind its not being involved in the instant case. This position must therefore fall.

Absent a showing of coercion, illusory promises or that he had been misled, Claimant was free to voluntarily waive his right to the holding of an investigation. It has been long held by the National Railroad Adjustment Board, and other statutory boards of adjustment, that the individual employee possess the right to waive the investigation assured him by reason of an investigation rule provided in a Schedule Agreement. See First Division Awards 14353 and 17152. Also see Awards 62 and 207 of Public Law Board 667 and 159 respectively.

Further, this Board has similarly so held in its Awards No. 2 and 60. The record herein provides no basis to cause us to change therefrom. In the circumstances, the claim will be denied.

AWARD: Claim denied.

J. L. Scanlan
Employee Member

F. J. Edzwald
Carrier Member

Arthur T. Van Wart
Chairman and Neutral Member

Issued at Billerica, Massachusetts this 31st day of January 1977.