

Award No. 33
Case No. 66

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employes
and
Louisville and Nashville Railroad Company

STATEMENT
OF
CLAIM:

1. The dismissal of Assistant Foreman G. R. Whitaker for allegedly "falsifying his expense Form 2312" was without just cause.
2. Carrier violated Rule 27(b) by failing to render a timely decision following the investigation held on June 16, 1978.
3. Because of either 1 or 2 above or both, claimant shall be returned to service with seniority and all other rights unimpaired and compensated for all wage loss suffered plus any other monies (expenses) due him.

FINDINGS:

Claimant, an assistant foreman with nine years' service, was dismissed for falsifying his expense form for the first and second periods of April

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1978. The evidence clearly supports Carrier's findings and it establishes that claimant claimed reimbursement for personal automobile expense, although in fact he was driving a Company van at the times in question.

Carrier should be able to rely on an assistant foreman to help it avoid loss resulting from improper reimbursement claims. It is not unreasonable therefore for Carrier to regard the violation of trust in question as most serious.

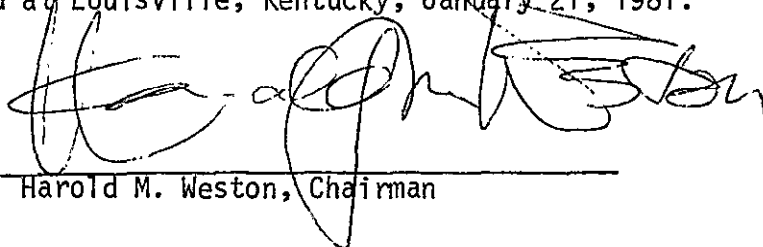
Petitioner contends that the dismissal must be set aside since Carrier's decision to dismiss claimant was rendered 31 days after hearing instead of 30 days, as prescribed by Rule 27(b).

This delay of one day, however, is not sufficient to vitiate the discipline in this case where Carrier's decision is based on substantial evidence and was reached only after claimant had been accorded a hearing on due notice. Neither Rule 27(b) nor any other provision to which we have been referred provides for a specific penalty or for the claim's allowance. There is no indication that the short delay in rendering a decision prejudged claimant's case in any material respect. We are not persuaded that this technical violation calls for the setting aside of discipline under these circumstances (cf. Third Division Award 21996).


However, in view of the fact that Carrier has indicated that it is not unwilling to reinstate claimant to its service, Carrier will be directed to offer claimant immediate reinstatement. In addition, one day's compensation will be awarded for Carrier's delay in rendering its decision. We agree with Petitioner that claimant's unavailability does not constitute a valid excuse for Carrier's violation. The claim will be denied in all other respects.

AWARD: Claimant to be reinstated with seniority unimpaired and with one day's pay. Claim denied in all other respects.

Adopted at Louisville, Kentucky, January 21, 1981.



Harold M. Weston, Chairman

Carrier Member

Employee Member