

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

1. The twenty (20) day suspension assessed Trackman G. R. Christenson was without just and sufficient cause. (Carrier's File D-11-21-66)
2. Trackman G. R. Christenson shall be provided the remedy prescribed in Rule 19(d).

OPINION OF THE BOARD:

On September 5, 1980, the Carrier directed the Claimant to appear at an investigation on the following charge:

"Your responsibility for failure to perform the duties of trackman and your failure to comply with instructions of Employees in charge during the dates of August 26 and September 3, 1980, while employed as trackman on Twin Cities Division Tie Gang No. 2 on the Le Mars and Waseca Subdivisions."

Subsequent to the investigation, the Claimant was disciplined to the extent referred to in the statement of claim.

The Organization makes a procedural argument which we must address before considering the question of guilt. They contend that the charge registered against the Claimant referred only to August 26 and September 3 and that the Claimant was prejudiced when the Carrier introduced evidence regarding dates inbetween August 26 and September 3. In this respect, Rule 19 was violated because it requires that an employee be advised of a precise charge.

The Carrier responds that the Organization made no objection to discussion of dates between August 26 and September 3 at the hearing. The notice, it is contended, can be read to cover the

the period of August 26 and September 3 inclusive. Further, they suggest that the Claimant was prepared and did in fact defend himself on the entire period.

In considering the merits of this procedural argument, we find that the Organization waived its right to make such an objection by its failure to register it during the hearing. While there is some ambiguity within the charge, it cannot be said to be prejudiced. The Organization must have read the notice to be inclusive as the transcript makes clear that the Claimant and his representative had offered a defense on all dates.

In regard to the question of guilt, we note that the charges against the Claimant, which were detailed during the hearing, could be generalized as "loafing." For instance, on some of the dates, a supervisor testified that he several times had to instruct the Claimant to engage in various work activities where other employees in the crew did not have to be specially instructed to engage in their work. There were times when he just stood or sat around when he should have been working. Other instances included a time when the Claimant was alleged to have been late from lunch and a time when he was found reading a newspaper. One supervisor testified he had received complaints from employees that the Claimant was not doing his share of the work.

In considering whether the charge is supported by substantial evidence, we find that it is. However, we did not come to that conclusion without carefully considering whether the Carrier's supervisors had provided sufficient documentation and without careful consideration whether Carrier supervisors had sufficiently warned

the Claimant that his behavior would lead to discipline if not corrected. While we find the documentation sufficient, we must say that it is only marginally so. The supervisors could have done a much better job. The warnings of disciplinary action were also only marginal and could have been more expressed and less implied.

AWARD


Claim denied.



Gil Vernon, Chairman



J. D. Crawford, Carrier Member



H. G. Harper, Employee Member

Date: March 25, 1982