

PUBLIC LAW BOARD NO. 2960

AWARD NO. 37

CASE NO. 61

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Rufus Vernon for alleged violation of Rule G at approximately 3:30 P.M. on November 23, 1981, was without just and sufficient cause. (Organization's File 9D-2728; Carrier's File D-11-17-81)

(2) The claim presented by Vice Chairman K. L. Bushman, dated February 5, 1982, to Assistant Vice President and Division Manager R. L. Johnson is allowable because said claim was not disallowed by Division Manager Johnson in accordance with Rule 21.

(3) Because of (1) and/or (2) above, Trackman Rufus Vernon shall be reinstated and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the employees and the Carrier involved in this dispute are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

On November 25, 1981, the Carrier directed the Claimant to attend an investigation to be held December 3, 1981, on the following charge:

"You are directed to appear for a formal investigation as indicated below:

DATE: Thursday, December 3, 1981  
TIME: 12:00 noon  
PLACE: Conference Room, Engineering Dept., Second Floor,  
Administration Building, Proviso Yard.  
CHARGE: To determine your responsibility in connection with your  
violation of Rule G at approximately 3:30 p.m. on  
November 23, 1981, at Proviso Administration Building.

You may be accompanied by one or more persons and/or representatives of your choosing subject to the provisions of applicable scheduled rules and agreements; and you may, if you so desire, produce witnesses in your own behalf without expense to the Transportation Company."

The investigation was postponed until December 8 and again until December 29.

The investigation was held on December 29 in the Claimant's absence. On January 7, 1982, the Carrier dismissed the Claimant. There is no doubt, based on the record, that the Claimant received proper notice to the investigation.

At the outset, the Organization raises certain procedural issues. The Organization alleges that Mr. R. L. Johnson, the Carrier officer to whom the Claim was filed initially, failed to respond within the 60-day time limit and failed to make a proper denial of the Claim as required by Rule 21 of the Agreement. Rule 21 of the Agreement reads:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Company authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Company, shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but shall not be considered as a precedent or waiver of the contentions of the Company as to other similar claims or grievances."

There is some dispute as to when Mr. Johnson responded. There were actually two letters sent in response to the original claim which was dated February 5. One of the responses was dated April 1 (within the time limit) and one was dated April 8 (outside the time limit). The Organization claims that they never received the April 1 letter.

Considering this procedural objection, the Board finds that whether the April 1 letter was received or not is irrelevant, because, even assuming it was, the Board agrees with the Organization that the nature of the April 1 letter does not constitute a proper response as required by Rule 21 as it did not set forth such reasons for a denial.

The Carrier argues that the letter was a compromise letter to the extent of reducing the discipline but denying, by omission presumably, the balance of the claim. While it may have been the intent of the writer to deny the claim in its entirety if the compromise was not accepted or to deny the balance of the claim beyond 60 days, it is equally clear that he failed to give any reason for such alleged denial.

Rule 21 is clear and unambiguous. The reason for a denial of a claim must be set forth. The Board does not intend to be overly technical, but the clear language of the agreement contemplates that a denial of the claim as well as the Carrier's rationale and reasoning for such denial be given. Certainly such a denial need not be an eloquent or lengthy dissertation, but it must set forth the Carrier's position to a sufficient degree to enable the Organization the opportunity to evaluate their own position and the opportunity to develop an adequate response for the purpose of appeal. Such an opportunity is denied unless the basis for the Carrier's position is set forth. It must not be forgotten that the purpose of the grievance procedure and requirements such as having written reasoning set

forth in denials is to encourage a full exchange of arguments and evidence in the hopes of a voluntary resolution. In the event that a voluntary resolution is not possible, the purpose of such a rule is to develop a full and adequate record on which the parties can proceed to arbitration. It should be added that the Carrier officer should not be faulted for his attempts to compromise the dispute in his April 1 and April 8 letters. The Board certainly does not want to discourage such efforts. However, where such an offer is made and it is the intent to deny the balance of the claim, reasons for such denial should be set forth as required by Rule 21.

The Board has determined that a violation of Rule 21 occurred. Rule 21 also states that if the grievance is not disallowed in the manner provided in the rule, the claim must be allowed to be presented. However, notice is taken that the Claimant was subject to dismissal in Docket No. 60 of this Board and that the dismissal was upheld in that case. Therefore any claim for reinstatement or backpay, due to the technical violation of Rule 21 under this separate action, is moot.

AWARD

Claim sustained only to the extent indicated in the opinion.



Gil Vernon, Chairman



J. D. Crawford, Carrier Member



H. G. Harper, Employee Member

Date:

June 28, 1983