

PUBLIC LAW BOARD NO. 2960

AWARD NO. 40

CASE NO. 73 & 74

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Case No. 73

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman Earl Hicks for alleged violation of Rule 7 in that he allegedly misrepresented his seniority date was without just and sufficient cause, unwarranted and excessive. (Organization's File 9D-2756; Carrier's File D-11-17-393)
- (2) Trackman Earl Hicks shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

Case No. 74

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman Earl Hicks for alleged violation of Rule 14 in that he was approximately fifteen (15) minutes late for work on December 1, 1981, was without just and sufficient cause and excessive. (Organization's File 9D-2757; Carrier's File D-11-17-394)
- (2) Trackman Earl Hicks shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF THE BOARD:

This Board, upon the whole record and all the evidence, finds and holds that the Employee and the Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor

Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

The Board has taken the liberty of combining, for the purpose of consideration, the two Dockets. Both, while involving separate incidents a day apart and separate hearings, involve the same Claimant and resulted in dismissals.

The first Docket involves an incident which occurred November 31, 1981. On December 1, 1981, the Claimant was directed to appear for an investigation on the following charge:

"Your responsibility, if any, in connection with your violation of Rule No. 7 of the General Regulations and Safety Rules, on November 30, 1981."

The investigation was held after postponements on December 30, 1981. On January 5, 1982, the Claimant was dismissed.

The second Docket involves an incident which occurred on December 1, 1981. On December 1, 1981, the Carrier directed the Claimant to appear for an investigation on the following charge:

"Your responsibility, if any, in connection with your violation of Rule 14 of the General Regulations and Safety Rules on December 1, 1981."

The investigation was held December 30, 1981, and on January 5, 1982, the Claimant was dismissed.

Rules 7 and 14 of the General Regulations and Safety Rules read as follows:

Rule 7: "Employees are prohibited from being dishonest."

Rule 14: "Employees must report for duty at a designated time and place."

In regard to Docket 73, it is the conclusion of the Board that the Claimant was in violation of Rule 7. The facts developed at the hearing clearly established that Mr. Hicks informed Shanks that he had been to see the Chief Clerk, "Sandy", and had a seniority date of September 8, 1978. Based upon that information, the Claimant was permitted to displace a Trackman at the California Avenue Coach Yard. The following day, Roadmaster Shanks was checking the seniority dates of the employees working for him, and he noted that the seniority roster showed the Claimant as having a seniority date of March 2, 1980. With this date, the Claimant would not have been able to make the displacement he did. Mr. Shanks then spoke to the Claimant who admitted that he had lied about his seniority date. He also spoke to Sandy who indicated to Shanks that the Claimant had not been to see her. In the opinion of the Board, the Claimant failed to offer an adequate defense.

In regard to Docket 74, it is also the conclusion of the Board that the Claimant was in violation of the pertinent Rule--in this case Rule 14. The record established that on December 1, 1981, the Claimant was assigned as a Trackman at the California Avenue Coach Yard and was scheduled to start work at 7:30 a.m. Shortly before the Claimant was due at work, Chicago Terminal Roadmaster Phil Shanks informed the Claimant's Foreman that he wanted to talk to the Claimant when he came in. At approximately 7:40 a.m., Mr. Shanks called back to the Coach Yard and asked to speak to the Claimant. He was advised that Claimant was not at work yet and continued his discussion with the Foreman until approximately 7:45 a.m., at which time the Claimant reported to work. Mr. Shanks then told the Claimant that he was due at work at 7:30, not

7:45. The Claimant responded that he had a problem with his power. As there had been a power outage in the vicinity of the California Avenue Coach Yard, Mr. Shanks called Commonwealth Edison and determined that the vicinity of the Claimant's residence was not affected.

At the hearing in connection with Docket 74, the Claimant contended that he was only two minutes late. However, the record is void of any evidence that he made such a claim at the time he was confronted by Shanks about being tardy. Thus, it was not improper for the Hearing Officer to discredit this testimony.

The Organization argues, in connection with both cases, that, even assuming the Claimant was guilty, discharge was excessive in view of the offenses.

The Board concedes that when these offenses are considered standing alone, they would not ordinarily, under these circumstances, justify permanent discharge. However, they do not stand alone. They must properly be viewed in conjunction with the Claimant's record. His past record includes five letters of reprimand of which three relate to Rule 14. It also includes four deferred suspensions; two of which involved Rule 14 and Rule 7 and three actual suspensions. All this occurred in the relatively short period of employment and convinces the Board that discharge, when considered in light of the Claimant's entire record, was not arbitrary, capricious, or unreasonable.

AWARD: The Claim is denied.

GIL VERNON

Gil Vernon, Chairman

H. G. Harper

H. G. Harper, Employee Member

J. D. Crawford

J. D. Crawford, Carrier Member

Dated: Dec 23, 1983