

PUBLIC LAW BOARD NO. 2960

AWARD NO. 61

CASE NO. 85

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Co.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Trackman F. M. Dillon was without just and sufficient cause. (Organization File 9D-2208; Carrier File D-11-17-405)

(2) Assistant Vice President and Division Manager R. L. Johnson failed to disallow the claim (appealed to him under date of September 25, 1981) as contractually stipulated within Agreement Rule 21(a).

(3) As a consequence of either or both, (1) and/or (2) above, Claimant F. M. Dillon 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 of 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.

On July 22, 1981, Claimant was employed as a Trackman on the Carrier's Chicago Division. At approximately 12:30 P.M. on that date, Claimant was engaged in an altercation with another Trackman. As a result, the two

employees were directed to attend a formal investigation in connection with the following charge:

"Your responsibility in connection with the incident on July 22, 1981 at approximately 12:30 P.M. at the Cleaning Track, which resulted in an altercation between Mr. Dillon and Mr. Sanchez."

Subsequent to the hearing on August 13, 1981, the Claimant was dismissed.

On September 15, 1981, the Vice-Chairman filed an appeal of the discipline with Mr. R. L. Johnson of the Carrier.

On October 15, 1981, the Carrier and the Claimant, through the auspices of the Equal Employment Opportunity Commission entered into an agreement concerning the Claimant's dismissal. As a part of the agreement, the Carrier agreed to reinstate the Claimant on a "leniency basis" effective November 9, 1981. Also part of the agreement read:

"The person claiming to be aggrieved agrees not to file a Union grievance regarding this specific incident."

On December 22, 1981, the Vice-Chairman wrote Mr. R. L. Johnson the following letter:

"This letter is in reference to mine of September 15, 1981, which served as an appeal of discipline assessed Mr. F. M. Dillon.

It has been 94 days since the filing of the afore cited appeal and I have not received any response. Rule 21 (a) states that the company will notify whoever filed said claim or grievance in writing within 60 days from the date filed if claim or grievance is to be disallowed. If not so notified, the claim or grievance shall be allowed as presented.

It is the claim of the Brotherhood that Mr. Dillon be reinstated with all rights unimpaired and be compensated for all lost time

in accordance with Rules 19 (d) and 21 (a) of the effective Agreement."

This case involves the application of Rule 21 (a) which reads:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe 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 employe 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 this shall not be considered as a precedent or waiver of the contentions of the Company as to other similar claims or grievances."

The Organization argues that the Claimant had no right to sign away contractual rights that accrued under the time limit rule or any other part of the contract. They also assert they do not need the employe's concurrence to file a grievance. Moreover, they believe the Claimant has no right to change the time limit rule which provides for the claim to be paid as presented in the event of default.

The Carrier denies that the time limit rule was violated. They acknowledge a claim was filed by the Brotherhood of Maintenance of Way Employees in the Claimant's behalf. However, they assert the Claimant was not barred from agreeing to a settlement of the claim on his own. The Settlement Agreement of October 15, 1981 fully disposed of the dispute by reinstating the Claimant on a leniency basis. As there was no longer a dispute pending, it was not necessary for the Carrier to respond to the September 15, 1981, letter of appeal. Consequently, in their opinion, the time limit was not violated. In the alternative, they also contend

it is evident that the Claimant and the Carrier in good faith negotiated a settlement to this dispute and Claimant should now be estopped from claiming any benefits which he waived in his settlement with the Carrier under the auspices of the EEOC.

Both parties positions are well-advocated and make valid and cogent points. The Union is correct that the language of the agreement does allow them to present grievances on behalf of employees. They have the right to police the agreement in order to maintain its collective integrity. An individual cannot enter into agreement with the Employer which abrogates or alters the rights of the Union or other Employees under the Collective Bargaining agreement. In this case, the Union had the right to take independent action and was entitled to an answer in accordance with the time limit rule.

The more difficult question in this case is one of damages. While a technical violation of the time limit rule occurred, the Claimant clearly waived his right to monetary damages in his settlement agreement. Absent the settlement agreement, there would be no question the Claimant would be entitled to compensation. However, because this case involved discipline, the damage issue has no collective impact or dimensions. It is significant too that the technical default occurred after the Claimant waived his right to back pay. Under these circumstances, we believe he had a right to waive entitlement to back pay. We also believe he did so without abrogating the collective bargaining rights of other employees.

In view of the foregoing, the claim will be technically sustained. Rule 21 (a) was violated but the Claimant is not entitled to collect

monetary damages. The Carrier is directed to comply with the time limits as required by the contract.

AWARD: The Claim is sustained to the extent indicated in the opinion.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: June 5, 1984