

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 3689

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

AWARD NO. 4

Case No. 4

STATEMENT OF CLAIM

1. The dismissal of S. D. Chapman was without just and sufficient cause and in violation of the Agreement (System File 6-23-11-15-55/013-210-C).

2. That the Carrier now be required to reinstate Mr. S.D. Chapman to his former position with seniority and all other rights restored unimpaired, his record cleared of all charges and with compensation for all wage loss suffered.

FINDINGS

In this dispute, both the Carrier and the Organization raise procedural issues Rule 49, which reads in pertinent part as follows:

RULE 49. TIME LIMIT ON CLAIMS

(a) All claims or grievances shall be handled as follows:

1. All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier 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 Carrier 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 Carrier as to other similar claims or grievances.

2. If a disallowed claim or grievance is to be appealed such appeal must be in writing and must be taken within sixty (60) days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed. . . .

The claim was submitted by the Organization's Vice Chairman on December 21, 1983. The Vice Chairman wrote again to the Carrier's Division Engineer on March 28, 1984, alleging that the Carrier had failed to respond to the claim within 60 days and arguing that the claim should be allowed under Rule 49 (a) 1. The Carrier stated that it

had responded to the claim on December 30, 1983, with copies to two other Organization officials. The Carrier sent a copy of such response to the Organization on April 4, 1984. There is no contradiction to the Carrier's statement that the Local Chairman had received his copy of the December 30, 1983 letter in a timely manner.

On the other hand, the Carrier points out that the Organization did not appeal the Division Engineer's response of December 30, 1983 to the Chief Engineer until May 4, 1984, thus exceeding the time limit in Article 49 (a) 2.

Based on the record, the Board finds that the Carrier has shown it answered the claim in a timely fashion on December 30, 1983, although it may well be the case that the Organization Vice Chairman did not receive his copy of such denial. Because of this possible mix-up, however, the Board will find that the time limit did not begin to toll against the Organization until its receipt of the later copy of the same letter, thus making the appeal to the Chief Engineer timely. The dispute should properly be resolved on its merit.

On October 6, 1983, the Claimant was presented with a letter requiring his presence at an investigative hearing

related to an incident in which he had been involved. After some discussion about the letter, the Claimant signed for its receipt and shortly thereafter left his work assignment and walked off the premises without notice to or permission from his supervisor. Understandably, the Carrier wrote to the Claimant as follows:

In accordance with Rule 48(1) of the Agreement between the Union Pacific Railroad Company and the Brotherhood of Maintenance of Way Employees, effective April 1, 1981, you are hereby dismissed from the service of the Union Pacific Railroad Company for refusing to work and voluntarily leaving the work site without proper authority at approximately 11:30 AM, October 6, 1983, at Nephi, Utah, while you were employed as Bridgeman, Steel Erection Gang 4971

The cited Rule 48 (1) reads as follows:

(1) Employees need not be granted a hearing prior to dismissal in instances where they refuse to work, voluntarily leave the work site without proper authority or involuntarily leave their job as a result of apprehension by civil authorities, willfully engage in violence or deliberately destroy Company property. Such employees may, however, make request for a hearing relative to their dismissal, and request therefore must be made within fourteen (14) calendar days from date of removal from service.


Investigation was timely requested on behalf of the Claimant, and following the hearing the dismissal was kept in force by the Carrier.

There is no question that the Claimant's action in leaving his work assignment without notice or permission is a most serious offense. Dismissal for such actions (or

the presumption of a resignation) can usually be expected to follow. The record shows, however, that the Claimant was in a temporarily disturbed emotional state, perhaps exacerbated by receipt of the investigation notice for the previous incident, the impact of which he may not have understood. Without suggesting that dismissal is generally inappropriate, the particular circumstances here are that permanent termination of employment was unduly harsh.

A W A R D

Claim sustained to the extent that the Claimant shall be offered reinstatement with seniority unimpaired, but without retroactive pay or other benefits. The Carrier is directed to put this award into effect within 30 days of the date of this award.


HERBERT L. MARX, JR., Neutral Member


C.F. FOOSE, Employee Member


E.R. MYERS, Carrier Member

New York, N.Y.

DATED: 4-12-85