

PUBLIC LAW BOARD NO. 6059

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION;

VS

CSX TRANSPORTATION, INC.

MMB CASE NO. 37

AWARD NO. 37

STATEMENT OF CLAIM:

Request of R. A. Jackson, ID# 199502, for removal of unfavorable discipline entry from his service record, pay for attending investigation on Tuesday, January 6, 1998, and pay for all time lost in connection therewith while serving ten (10) days actual suspension commencing on Friday, January 9, 1998, and ending at 2359 hours on Sunday, January 18, 1998.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved.

Claimant here involved was summoned for formal investigation to "determine the facts and place your responsibility, if any, in connection with your alleged excessive absenteeism for the period 10/1/97 through 11/30/97, and all circumstances related thereto." Following the investigation Carrier found claimant guilty of excessive absenteeism and assessed a 10 day actual suspension from service as discipline.

The Organization has argued before this Board that Carrier violated Article 46(B) of the governing agreement which reads as follows:

"(b) Yardmen or switchtenders continued in the service or not censured pending an investigation of an alleged offense shall be notified, within five days after the Company has information of the offense, that a charge is pending. Within five days thereafter an investigation shall be held, if demanded and a decision shall be rendered and made effective within three days after the investigation."

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This rule clearly provides for a notification within 5 days after the Company has information of the offense, and the Organization contends that while the alleged offense ended November 30, 1997, the charge letter was not generated until December 11, 1997, well beyond the 5 day limit specified in the Rule.

Carrier has argued that the report covering claimant's record from October 1 through November 30 was not generated by a Company Officer until December 8, 1997, and that the December 11 charge letter was well within the 5 day time frame. It is Carrier's position that the governing date is the date the officer who is responsible for issuing the charge has knowledge of the incident under review.

During the course of the investigation claimant's representative timely objected to Carrier's failure to abide by Article 46(b), and developed through questioning of a company witness that the report could have been generated to include dates up to and including December 8th. Claimant's representative also referred to Award No. 16 rendered by Public Law Board No. 5714 on this property, which covers a strikingly similar dispute and wherein the Board ruled that the governing rule "states an absolute time which must be followed."

Carrier has argued that Award No. 16 of PLB 5714 is palpably in error and should not be followed in the instant case. It is Carrier's position before this Board that "Carrier's first knowledge in the instant case was when Superintendent Dyer (the officer who issued the charge letter) was given the report of claimant's attendance for the period October 1, 1997 through November 30, 1997."

It is the opinion of this Board that the position taken by Carrier cannot be upheld in a situation such as that here presented. The employee's work record is a Company record and is available to the Company at all times. If this Board were to agree with Carrier's argument it would effectively delete the 5 day notice provision from Article 46(b); i.e., the Company officer who prepares the charge letter could wait any length of time before generating the charge letter and then merely state that was the first date he was aware of the alleged infraction. The intent of the Rule is quite clear; i.e., the charged employee "shall be notified, within five days after the Company has information of the offense, that a charge is pending."

The record before this Board is abundantly clear that the Company (not necessarily the charging officer) in this particular dispute was aware of claimant's attendance record on November 30, 1997 (covering the period from October 1 through November 30). Consequently, under the literal language of Article 46(b) claimant

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should have been notified that a charge was pending within five days after November 30. Inasmuch as the notification was not made until December 11, 1997, it is the opinion of this Board that Carrier failed to comply with Article 46(b) and the Board finds that this failure must result in negating the entire proceedings.

AWARD

Claim sustained. Carrier is instructed to comply with this award within 30 days of the date hereof.

F. T. Lynch
F. T. Lynch, Neutral Chairman

R. D. Hiel
R. D. Hiel, Carrier Member

J. L. Mateer
J. L. Mateer, Employee Member

ward date MARCH 8, 1999