

Award No. 16
Docket No. 16

PUBLIC LAW BOARD NO. 76

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

Roy R. Ray, Referee

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement by assessing Track Laborer Lucius Williams, discipline of 30 days actual suspension during the period June 20, 1967, to July 21, 1967.
2. The Carrier shall now reimburse Claimant Lucius Williams for this loss of wages suffered by him, account of the Carrier's violation of the Agreement.

OPINION OF BOARD: On June 20, 1967, at 5 P.M. Track Laborer Lucius Williams was held out of service by the Carrier for alleged misconduct at about 2 P.M. that day, the notice stating that he was suspended for talking back to his supervisor and for insubordination. By letter of June 21 (received by Claimant on June 22) the Division Engineer formally charged Williams with being quarrelsome and refusing to perform work he was instructed by Assistant Engineer of Maintenance Meuth to do. It advised that a hearing on the charges would be held on June 30, 1967. Hearing was held as scheduled and a transcript of the proceedings was made. At the close of the hearing Division Engineer Clark announced that Williams was found guilty as charged. On July 5, 1967 the Chief Engineer Hunter assessed Williams a 30 day suspension from service without pay, to run from June 20 to July 21. Hunter's decision was appealed to Carrier's highest appeal officer and sustained by him.

The Organization has challenged the suspension on the following grounds: (1) The charges contained in Clark's letter of June 21 were not specific as required by Article 23, Rules 1 and 2 of the Agreement. (2) The hearing was not held within 10 days of the charges as required by Rules 1 and 2 of Article 23, and (3) Claimant was wrongfully held out of service pending the hearing. The first two grounds were emphasized in the processing of the claim on the property and the third was the Organization's main reliance in its submission to this Board.

In our view the first two grounds are without merit. As to the first we find no lack of specificity in the charges. Clark's letter stated the offense with which Williams was charged; the date and time of day of the offense allegedly occurred; and the Rules claimed to have been violated. With reference to the timeliness of the hearing we find that it was held within 10 calendar days of the date Williams was held out of service and within 9 calendar days of the date the charges were preferred against Claimant. The time limit provisions of Article 23 Rule 1, were, therefore, complied with by Carrier.

The crucial question here concerns whether Carrier was justified in taking Claimant out of service pending hearing and decision. Article 23, Rule 1 provides that an employee with 12 months or more of service will not be disciplined or dismissed without first being given a fair and impartial hearing. It makes one exception, namely, that when the offense is sufficiently serious an employee may be suspended pending a hearing. In Award 11 of this Board we said that we interpreted "sufficiently serious" to mean conduct involving moral turpitude, safety violations or other gross misconduct providing reasons for immediate suspension. These might include intoxication, fighting with other employees or attack upon a supervisor or

use of threatening or abusive language to supervisors. We do not regard the conduct charged here as being in that category. The Extra Gang Foreman who took Williams out of service reported on Form 1846 that he was suspended because he talked back to Mr. Meuth and was insubordinate. The incident occurred about 2 P.M. Claimant continued to work the remainder of the afternoon, until 5 P.M., during which time no further difficulty seems to have transpired. Since neither Foreman Mirick nor Assistant Engineer Meuth suspended Williams at 2 P.M. this would clearly indicate that they did not consider the offense "sufficiently serious" to remove Williams from service. If he then worked the balance of the day without further incident it was reasonable to assume that he would continue to do so while awaiting hearing. We find no urgency for the suspension prior to hearing. By our holding we do not mean to challenge the findings of the hearing officer (who was also the prosecutor) based upon the evidence produced at the hearing. It may well be that the facts established by the evidence presented justified Carrier in imposing a suspension upon Claimant and that the penalty assessed was reasonable. But that is not the issue here. The point is that where conduct such as that charged here is involved the employee is entitled to have the facts determined in a hearing before he is removed from service. Carrier cannot prejudge the matter and escape the effect of Article 23, Rule 1. As we said in Award 11 the very purpose of Rule 1 is to protect employees from the kind of precipitate action which took place here. In this connection we find the words of Referee Coffey in Award 5140 of the Third Division especially appropriate:

"There remains, however, the question of whether the disciplinary measures invoked were just and proper. The Board is of the opinion that action taking employes out of service, more or less as a matter of routine, pending hearing and decision on alleged rules violations, which are not aggravated or serious per se, is inappropriate, hasty and ill-advised. This Carrier seems to misconceive the true purpose and intent of Rule 1, Article 21, of the Agreement, as it pertains to suspension of employes, pending hearing and decision based on charges of misconduct.

"It would appear to be a reasonable construction of the rule to say that only in cases involving charges of moral turpitude, safety violations, and other gross misconduct, should the employee be taken out of service before the hearing and decision. It is the evident purpose of the rule to maintain the status quo of employees, so far as possible, until the hearing, so that his rights will not be prejudiced by precipitate action, and the employer will not be confronted with charges of inflicting punishment to off-set monetary losses confronting it, should the earlier action be over-ruled.

"We believe the parties appreciate the need for protecting their hearing procedures, and decisions of management based thereon, from charges that the employee did not have a fair and impartial hearing. By agreement they introduce into their relations the democratic processes that only after hearing and "conviction" is one guilty of the offense charged. Therefore, meticulous care should be taken to avoid any claim that the guilt of the accused has been prejudiced. Thus, the need to maintain the status quo, as far as possible, until both sides of the controversy have been heard and a fair and impartial decision rendered.

"For the reason we believe the Carrier violated the Agreement, when it suspended claimant before a hearing and decision, that part the disciplinary action cannot stand. Therefore, the aggrieved employee is entitled to be paid for that period when he was wrongfully held out of service."

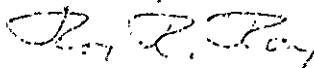
Claimant was held out of service from June 20 to July 21, 1967. We hold that by taking Claimant out of service prior to the hearing Carrier violated Article 23, Rule 1. Claimant is entitled to payment for all working days lost between June 20 and June 30. It appears, however, that he has already been compensated by Carrier's Claims Department for 11 of the 22 working days during the June 20 - July 21 period on the representation of Claimant that he was physically unable to work. If any of those eleven days fell between June 20 and June 30 Carrier is entitled to deduct those from the total for which it is to compensate Claimant.

A W A R D

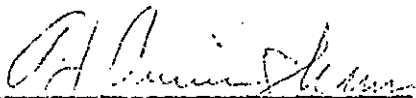
The claim is sustained in part. Carrier is directed to compensate Claimant Williams for any working days lost between June 20 and June 30

for which he has not already been compensated by Carrier's Claims
Department.

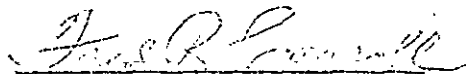
Public Law Board.No. 76



Roy R. Ray
Neutral Member and Chairman



A. J. Cunningham
Employee Member



F. R. Carroll
Carrier Member

Dallas, Texas
December 12, 1968