

PUBLIC LAW BOARD NO. 1844

AWARD NO. 69

CASE NO. 84

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- "(1) Investigation held on November 16, 1978, at Waukegan, Illinois Public Library was improper and in violation of Rule 19(a) of the August 1, 1974 Agreement.
(System File D-11-8-498)
- "(2) The dismissal of Machine Operator Carlo Filippelli, was therefore also improper and in violation of Rule 19(a) of the August 1, 1974 Agreement.
- "(3) Machine Operator Filippelli now be reinstated with all rights unimpaired, compensated for all lost time and the matter of discipline be stricken from his record as a result of the violation referred to in parts one (1) and two (2) hereof."

OPINION OF BOARD:

Claimant was employed as a Machine Operator on Carrier's Wisconsin Division. Under date of November 13, 1978, he was served with the following Notice of Investigation:

Sir:

You are hereby directed to report for formal hearing as scheduled below:

Place: Waukegan Public Library, 128 North County
Seat, Waukegan, Illinois
Date: Thursday, November 16, 1978
Time: 10:00 AM.

Charge: Your failure to properly protect your assignment on November 7, 8, 9, 10 and 13, 1978, and furnishing false information to Company Doctors regarding your alleged injury on November 8, 1978, in the vicinity of Tower KO.

You may be accompanied by one or more persons of your own choice subject to the applicable terms of the Schedule Agreement with the Brotherhood of Maintenance of Way Employees; and you may, if you so desire, produce witnesses in your own behalf without expense to the Transportation Company.

The Assistant Chairman of the Brotherhood, Claimant's duly accredited representative under Rule 19 of the Agreement, requested and was granted a postponement of the hearing from 10:00 AM to 1:30 PM on January 16, 1978. However, on the afternoon of November 15, 1978, one day before the scheduled hearing, Claimant himself telephoned Carrier and demanded another adjournment of the hearing until November 27, 1978; on the ground that his private attorney was unavailable until the later date. Rule 19 was read to Claimant and he was advised that he should handle his request through his Union representative. From the record it appears that Claimant rejected that information and made no contact with his Brotherhood representative. Instead, he tried again on the evening of November 15 and the morning of November 16, 1978 to obtain an adjournment so his attorney could represent him. He was again referred to his Brotherhood by the Carrier. But Claimant stated in words or substance that he would not come to the hearing without his attorney.

At the time appointed for the hearing on November 16, 1978 Claimant's Brotherhood representative was present but Claimant never appeared. The hearing went forward in his absence. Following that investigation Claimant was found guilty on the charges and dismissed from service. The instant claim was handled without resolution on the property and appealed to this Board for determination. Claimant was provided due notice and opportunity

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to attend the hearing of this Board. He chose not to appear but he was represented at our hearing by the Brotherhood.

Careful review of the record and the clear language of Rule 19 shows that the procedural objections relative to the non-adjourning of the hearing are without substance. Neither Claimant nor his private attorney have an enforceable contract right of adjournment. Absent a request for postponement by the Organization or the Carrier, the last sentence of Rule 19(a) does not come into play. Claimant was in no way deprived of his right to representation under Rule 19. He had proper notice and representation and his refusal to attend the hearing was at his own peril. See Award 3-21626. The record evidence supports Carrier's findings of culpability and we cannot find the penalty arbitrarily excessive.

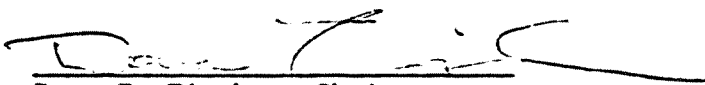
FINDINGS:

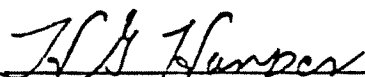
Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
 2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Date: March 25, 1980

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