AWARD NO. 147
CASE NO. TD-1304

BEFORE

PUBLIC LAW BOARD NO. 1281

UNITED TRANSPORTATION UNION (T)

v.

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM:

Central Region: Panhandle Division Case No. 8852-M - 'Appeal of Trainman M. A. Czoka from discipline of dismissal for an occurrence on June 28, 1969.'

FINDINGS:

For an occurrence on June 28, 1969, Carrier timely filed charges against Claimant and trial was timely held on July 11, 1969. Carrier, on July 16, 1969, found Claimant guilty and discipline of dismissal in all capacities was imposed. By letter dated July 30, 1969, Claimant appealed the imposition of the discipline to Superintendent-Personnel. The appeal was heard on August 22, 1969. The Superintendent denied the appeal on August 27, 1969. NO FURTHER ACTION WAS INITIATED BY CLAIMANT UNTIL SEPTEMBER 12, 1973 -- four (4) years after the denial of the discipline appeal.

On September 12, 1973, L. A. Morgan, Local Chairman #991 UTU(T) wrote to Superintendent Labor Relations:

On October 2, 1969 Mr. B. F. Morrow, then Local Chairman for Trainmen Lodge #991, requested a joint statement of agreed upon fact in the case of trainmen M. A. Czoka, who was dismissed from service for incidents of June 27, 1969 and June 28, 1969.

I have no record of this joint statement ever being prepared. If this statement was prepared I would like to have a copy of it, and if it was never formulated, please do so promptly.

Enclosed is a copy of Mr. Morrow's letter of October 2, 1969. (Emphasis supplied)

The copy of Mr. Morrow's letter reads:

This is in reference to your letter of August 27, 1969 concerning the appeal hearing of Mr. M. A. Czoka held in your office on August 22, 1969.

Please be advised that your decision in this case is not acceptable and that it is my wish that a Joint Statement of Agreed - upon - Facts be prepared.

Superintendent Labor Relations replied by letter dated October 5, 1973:

This refers to your letter of September 12, 1973, requesting a Joint Statement Of Agreed Upon Facts in the discipline case of Trainman M. A. Czoka.

We have no record of receiving a request from former Local Chairman Morrow for a joint submission on the discipline case of Mr. Czoka. In fact, Mr. Czoka's personal file had been sent to Philadelphia for storage and upon receipt of your letter of September 12, we had to request the file be returned in order that we could properly comply with your request for a submission.

In your letter of September 12th, you indicate Mr. Czoka was dismissed for incidents on June 27 and 28, 1969. The incident on June 27, 1969, involved a suspension of 30 days for violation of Company policy by incurring a garnishment against his wages.

We have, therefore, attached proposed Joint Statement Of Agreed Upon Facts covering the incident on June 28, 1969, for which Mr. Czoka was dismissed.

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A Joint Statement of Agreed Upon Facts including the respective position of the parties was executed on December 18, 1973. The position of each party as stated therein reads:

POSITION OF EMPLOYEES: 1. Mr. Czoka did not receive a fair trial because the Carrier brought out in the trial record on Page 8 of the transcript his work habit of marking off or marking down or marking off on VRD, which has no bearing on the charges brought against Mr. Czoka in this trial. It is our opinion the Company dismissed Trainman Czoka for this work pattern not for the charges brought against him on July 12, 1969.

2. Mr. B. F. Morrow, former Local Chairman asked for a Joint Statement Of Agreed Upon Facts on October 2, 1969. This was not prepared until October 5, 1973. It is unfair for the Carrier to wait four years to prepare a Joint Statement Of Agreed Upon Facts. We, therefore, request Mr. Czoka be returned to duty with all seniority rights restored and he be paid for all time lost.

POSITION OF COMPANY: The Employees' contentions indicate the appellant was not permitted a fair and impartial trial due to the fact the employee's past work record was brought out in the trial. The appellant's work record is considered poor by the Carrier, thus the Employees take exception to the right of the Carrier to submit supporting facts to their case. However, on the other hand, had the appellant had an impressive work record the Employees would most likely then insist the appellant's work record be admitted as a supporting fact. The allegation made by the Employees is without basis as the appellant's past work record should be a proper part of the trial proceedings.

The present Local Chairman is grasping for support to defend the appellant, at this late date, indicating it was unfair for the Carrier to wait four years to prepare a Joint Submission, thus indicating the Carrier and not the Employees are in error. The Chairman's contention is based on the fact he has a copy of a letter signed by the former Local Chairman dated October 2, 1969 addressed to the Superintendent-Labor Relations requesting a Joint Submission be formulated in the case at hand. The present Local Chairman, however, does not know if the letter was sent. From the date of October 2, 1969, until September 12, 1973,

the Carrier heard nothing of this case and the Employees had never made mention of any sort on the case as to when the Carrier received the letter, or if an attempt would be made by the Carrier to prepare the case. The Local Chairman was advised by a cover letter dated October 5, 1973, with the prepared Joint Statement Of Agreed Upon Facts, in reply to the Chairman's letter of September 12, 1973, that, in fact, our files on the employee were in storage in Philadelphia. If the Chairman was so interested in the appellant being returned to service why has it taken four years to make any comment on the case?

It is apparent little concern was put on this particular matter by the Chairman involved until the appellant himself made inquiry, at this late date.

The appellant, notwithstanding the foregoing, was disciplined on the basis of the charged offense which is supported by the trial record. He did, in fact, fail to immediately report an alleged personal injury and obtain medical attention for this same alleged injury. Discipline should, therefore, stand as instituted with no further action to be taken.

This Board will deny the Claim for the following reasons:

I. Claimant had the burden of proving by a preponderance of evidence of probative value that the letter allegedly written by Local Chairman Morrow on October 2, 1969, was in fact transmitted to Carrier. Claimant failed to satisfy the burden;

II. Even if the letter was transmitted Claimant, as moving party, had the obligation of promptly pursuing the request if Carrier failed to reply within a reasonable time. Claimant failed to do so;

III. The objective of The Railway Labor Act is "to provide for the prompt disposition of disputes between carriers and their employees...." Section 2 (4) of the Act, captioned "GENERAL PURPOSES," reads: "The purposes of the Act are... to provide for the prompt and orderly settlement of all disputes concerning... rules, or working conditions.

Under the caption "GENERAL DUTIES" paragraph Second of the Act reads: "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition..."; and

IV. Claimant's nonfeasance -- for a period of four (4) years following Carrier's final denial of the Claim -- can be construed only as constructive acceptance of the final denial; or, abandonment of the Claim.

AWARD:

Claim DENIED.

ORDER:

The Award, supra, shall be effective as of the date of its issuance shown below.

John H. Dorsey
Chairman & Neutral Member

S. J. Wilson
Carrier Member

P. J. McNamara
Employee Member

Issued at Philadelphia, Pennsylvania
this 18th day of December, 1975.