

PUBLIC LAW BOARD NO. 1844

AWARD NO. 27

CASE NO. 32

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the Brotherhood that:

- (1) The 30 day suspension of Trackman M.E. Munsell was without just and sufficient cause and wholly disproportionate to the alleged offense.
- (2) The decision rendered under date of May 3, 1977 was not within 10 days of the completion of the hearing as required by Rule 19.
- (3) Mr. Munsell's record be cleared of the charges placed against him and that he compensated for all time lost.

OPINION OF BOARD:

Claimant entered service of Carrier in August 1975. In April 1977 he was working on a track maintenance gang under the supervision of Section Foreman Jeff Payne. On April 13, 1977 Claimant was called before an investigative hearing into charges contained in a notice reading as follows:

To determine your responsibility in connection with your actions at approximately 2:30 P.M. on April 11, 1977 in the vicinity of Bell Avenue Yard while employed as a trackman on the Bell Avenue Section when you disobeyed your foreman's orders to wear your shirt for which you are charged with violation of Rules No. 7 and 34 of the General Regulations and Safety Rules effective June 1, 1967.

For the record, Rules No. 7 and 34 of the General Regulation and Safety Rules, effective June 1, 1967, read as follows:

Rule 7 - Employees are prohibited from being careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious or conducting themselves in such a manner that the railroad will be subjected to criticism and loss of good will, or not meeting their personal obligations.

Rule 34 - Shirts or undershirts must not be removed during extremely hot weather as a means of cooling off.

Unrefuted evidence from the transcript of hearing, including admissions by Claimant, show that he removed his shirt and was working shirtless at about 2:30 P.M. on April 11, 1977. He refused to obey several direct orders from his Foreman to put the shirt back on. Claimant alleged at the hearing that he had dropped the shirt and it was dirty but he did not tell this to the Foreman on April 11, 1977. Instead, he flatly refused to obey the order and told the Foreman in words or substance that there was no one else around to catch him for violating Rule 34. We note that the hearing transcript also contains one brief mention that Foreman Payne instructed another employee named "Dave" to put on his hard hat and safety glasses at about the same time he told Claimant to put on his shirt. Claimant's insubordination was with respect to the shirt however, not glasses or hard hat. Following the April 20, 1977 investigation Claimant was notified on Thursday, April 28, 1977 that he was assessed 30 days suspension for "disobeying your foreman's orders to wear your hard hat and safety glasses on April 11, 1977 in violation of Rules 7 and 33" Rule 7 has already been quoted supra and Rule 33 goes to wearing of safety glasses. The following Tuesday, May 3, 1977, the Notice of Discipline date April 28, 1977 was rescinded and an amended Notice of Discipline was issued. The cover letter with the amended Notice of May 3, 1977 read as follows:

Please disregard Discipline Notice No. 16 dated April 28, 1977. Attached is Discipline Notice No. 16-A indicating 30 days actual suspension for your responsibility when on April 11, 1977 you disobeyed your foreman's orders to wear your shirt for which you were charged with violation of Rules 7 and 34 of the General Regulations and Safety Rules effective June 1, 1967.

This case comes to us on appeal on several grounds to wit: (1) That Carrier violated Rule 19 because Claimant was found guilty and assessed 30 days suspension on April 28, 1977 on a charge different from that upon which he was brought to investigation; (2) that Carrier violated Rule 19 because the amended Notice of Discipline was dated more than 10 calendar days after the close of hearing; and (3) that the 30 day suspension is excessive even if Claimant was guilty as charged. Carrier responds that the issuance of the April 28, 1977 Notice was a "typographical error" which was corrected without prejudice to Claimant; that the evidence supports his guilt of violating Rules 7 and 34; that the corrected Notice of May 3, 1977 should not be considered untimely; and that 30 day suspension for flagrant insubordination is not arbitrary or unreasonable discipline.

As we have observed elsewhere, the time requirements of Rule 19 are ignored at a party's peril. On the other hand, these rules were designed to apply in real life situations and cannot be so rigidly construed that they lose touch with the reality of the work place. The core of the charge against Claimant is insubordination, specifically for refusing to obey a direct order to wear his shirt. Those charges are more than persuasively supported by evidence in the transcript of hearing. Neither Claimant nor anyone else connected with the case could have the slightest doubt about the charges to which Claimant admitted guilt. Within 10 calendar days of the hearing Claimant was notified of his suspension for 30 days for failure to obey an order to wear hard hat and safety glasses. But within a few days this erroneous Notice was revoked and Claimant was notified properly of his

suspension for refusing the order to wear his shirt. On these facts can a reasonable and objective reviewer find a violation of Rule 19? We think not. We do not hesitate to find violations where Carrier actually bases a decision to discipline an employee upon charges other than those raised and proven in the investigation, for this is tantamount to disciplining the employee without a fair and impartial hearing. Nor do we disregard real violations of the time limits contained in Rule 19. But this is not such a case. We are convinced that the Notice of Discipline of April 28, 1977 was a result of administrative negligence and not of false judgement on unproven charges. We do not condone or encourage repetition of the sloppy handling of the original Notice of Discipline by the ADME, but in the particular facts of this case we believe the amended Notice of May 3, 1977 was effective to correct the record. To hold that the corrected Notice was out of time under Rule 19 would be to elevate form over substance to a degree clearly not contemplated by the realistic bargainers who negotiated this labor-management agreement.

As for the quantum of discipline assessed, it must stand. While a 30 day suspension is perhaps more severe than we might have imposed in the first instance, particularly in light of Claimant's otherwise clean record, we may not modify unless we deem the penalty so excessive and disproportionate to the offense as to be arbitrary, unreasonable, or capricious. We cannot so find in the face of the overwhelming evidence of Claimant's blatant insubordination. The claim must be denied.

FINDINGS:

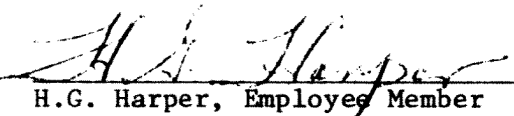
Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

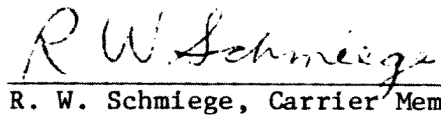
1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


H.G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: 1/11/44