

AWARD NO. 58

CASE NO. 71

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The sixty (60) day suspension of Trackman Jose G. Ramos was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File D-11-17-241)
- (2) (a) Time limits were not observed under the provisions of Rule 19(a).

(b) Claimant in addition to the sixty (60) day suspension was notified to serve a twenty (20) day deferred suspension recorded in Notice to Serve deferred Suspension No. 2.
- (3) Trackman Ramos be compensated for all time lost and the discipline be stricken from his record."

OPINION OF BOARD:

The threshold question upon which this case turns concerns the timeliness of the hearing which was held on November 2, 1977. There is no doubt that this was more than ten (10) days after the incident for which Claimant was charged. Carrier asserts, but has declined or failed to provide any corroborative evidence, that the ADME first learned of the incident on October 26, 1977. Even if arguendo, this belated knowledge was established, there is no showing of justification for such delayed communication.

The controlling principles for such cases were developed by this Board in Award No. 26 (Case No. 31) as follows:

"Under the controlling language at issue herein, the hearing must be held within ten calendar days of the alleged offense or within ten calendar days of the date when the ADME learns of the alleged offense. The obvious intent of that language is to require expeditious investigation so that evidence will be fresh and memories vivid; and so that an accused employee will not be kept in limbo. Failure to abide by those express requirements could invalidate an otherwise proper imposition of discipline.

"A word about burdens of proof under such language is appropriate at this point. A party alleging a procedural defect (in this case the Organization) carries the initial burden to show a prima facie violation of time requirements. Under the language before us we deem that this initial burden is met if it is shown that the hearing was held more than ten calendar days after the occurrence of the alleged offense. Upon such a prima facie showing the burden shifts to the Carrier to show extenuating circumstances, if any. Where, as here, Carrier avers that the hearing was held within ten calendar days of the ADME's knowledge of the alleged offense, then Carrier has the burden of proving that fact, as well as the additional burden of showing good reason for any delay in the ADME acquiring knowledge of the offense. The latter point must be a required burden of proof in such cases to vitiate the potential for unilateral manipulation of the negotiated time limits if the ADME is negligently or even intentionally kept in the dark about an alleged offense.

See also, Award No. 28 (Case No. 35).

The Organization has made out a prima facie case that Carrier has violated Rule 19(a) and Carrier has failed to rebut that showing. Accordingly, the claim must be sustained. No finding is made or implied regarding the merits of the disciplinary action.

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 time limit was violated.

AWARD

Claim sustained. Carrier is to comply with this Award within thirty (30) days of issuance.

Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Date: Dec 5, 1979