

PUBLIC LAW BOARD NO. 2960

AWARD NO. 132  
CASE NO. 178

PARTIES TO 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) The thirty (30) day suspension assessed Trackman D. H. Lopez on the charge of excessive absenteeism is unduly harsh, excessive, improper and on the basis of an unjust hearing.  
[Organization File 2SW-1024 D; Carrier File 81-85-168 D]
- (2) Claimant Lopez shall be allowed the remedy as prescribed in Rule 19 (d)."

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On March 25, 1985 the Carrier directed the Claimant to attend an investigation. The notice read in pertinent part as follows:

"You are hereby directed to appear for formal investigation as indicated below:

PLACE: Roadmaster's Office  
1400 LaCleda Street  
Trenton, Missouri

TIME: 9:00 A. M.

DATE: Friday, March 29th, 1985

CHARGE: Your responsibility in connection with your excessive absenteeism, subject to provisions of applicable rules in the Applicable Schedule and you may, if you so desire, produce witnesses in your own behalf, without expense to the Transportation Company."

Subsequent to the investigation the Claimant was assessed a 30 day suspension.

At the investigation the Carrier presented evidence concerning (1) the Claimant's absence on March 23, 1985 and (2) five earlier absences on February 2, 13, 14, March 6, 15, and 23. Significantly, at the investigation, the General Chairman made two objections to the inclusion of these later dates. First, he objected because they were outside the 10-day time limit for charges set forth in Rule 19. Second, he argued the notice of hearing was defective because it was not specific as to set dates other than March 23, 1985.

These objections both require the Board's attention. First, Rule 19 does not act as a bar to a charge of excessive absenteeism even if some of the dates are outside the 10-day time limit. It would be an unreasonable application of the rule to foreclose the Carrier from addressing an employee while attendance record as a whole was unacceptable. It is important for the Carrier to have such latitude.

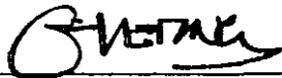
While the Carrier in these unusual circumstances should have the latitude to look at an employee's attendance record over a broader spectrum of time than any one 10-day period, there is also a very important competing consideration raised by the General Chairman's second objection.

Rule 19 requires a specific charge, which is an important requirement in and of itself. However, it becomes even more important in an excessive absenteeism case since some of the absences may be weeks or months old. An employee is entitled to have such a notice spell out exactly what dates the Carrier is relying on. It is often difficult to recall "cold turkey" circumstances surrounding events that are far in the past. In this case that's precisely what happens and thus it is difficult to conclude a fair hearing was granted. If the Carrier is going to rely on dates beyond 10 days to support a charge of excessive absenteeism it must specify in those charges the dates which it intends to investigate so as to allow the Claimant sufficient time for preparation.

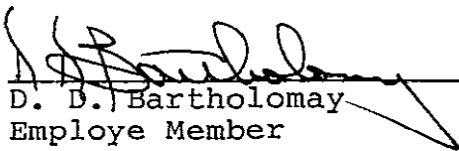
This due process consideration is too important to ignore and on this basis the discipline must be overturned. Yet, let there be no misinterpretation of this award. Excessive absenteeism is a proper charge. Moreover, but for the procedural glitch the case against the Claimant was fairly convincing. A most important element was the fact he had been counseled on March 16 concerning his absenteeism and was subject to progressive discipline on previous occasions.

AWARD:

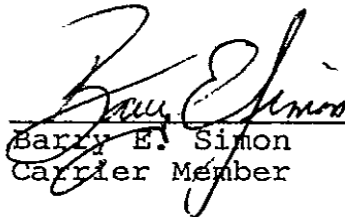
The claim is sustained.



Gil Vernon, Chairman



D. D. Bartholomay  
Employee Member



Barry E. Simon  
Carrier Member

Dated:



July 6, 1988