

PUBLIC LAW BOARD NO. 2960

AWARD NO. 74  
CASE NO. 72

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 sixty (60) day suspension assessed D. L. Gates for alleged violation of Rule 14 was without just and sufficient cause. (Organization File 9D-2451; Carrier File D-11-17-399).
- (2) The hearing in this instance was not held in accordance with Rule 19(a) nor was D. L. Gates allowed due process as afforded in that rule.
- (3) Because of either Part 1 or 2 hereof, Claimant D. L. Gates shall be allowed the remedy 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.

The following notice was hand delivered to the Claimant on  
September 22, 1981:

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

DATE: Friday, October 2, 1981

TIME: 11:00 A.M.

PLACE: Office of the Assistant Division Manager -  
Engineering, 500 W. Madison Street, Room 411 CPT  
Chicago, IL 60606

CHARGE: Your responsibility in connection with your viola-  
tion of Rule No. 14 on Friday, September 18, 1981  
and Monday, September 21, 1981.

"You may be accompanied by one or more persons and/or representa-  
tives of your own choosing subject to the provisions of applicable  
rules and agreements. You may, if you so desire, produce wit-  
nesses in your own behalf without expense to the Transportation  
Company."

Rule 14 states:

"Employees must report for duty at the designated time and place.  
They must be alert, attentive and devote themselves exclusively to  
the Company's service while on duty. They must not absent them-  
selves from duty, exchange duties with or substitute others in  
their place, without proper authority."

The Organization argues that the discipline cannot stand because  
the time limits for holding a hearing under Rule 19(a) were violated.

Upon review of the record, we must agree with the Organization:

Rule 19(a) states:

"(a) Any employee who has been in service in excess of sixty (60)  
calendar days will not be disciplined nor dismissed without a  
fair and impartial hearing. He may, however, be held out of  
service pending such hearing. At the hearing, the employee may be  
assisted by an employee of his choice or a duly accredited repre-  
sentative or representatives of the Brotherhood. The hearing will  
be held within ten (10) calendar days of the alleged offense or  
within ten (10) calendar days of the date information concerning  
the alleged offense has reached the Assistant Division Manager-  
Engineering. Decision will be rendered within ten (10) calendar  
days after completion of hearing. Prior to the hearing the em-  
ployee will be notified in writing of the precise charge against  
him, with copy to the General Chairman, after which he will be  
allowed reasonable time for the purpose of having witnesses and  
representative of his choice present at the hearing. Two working  
days will, under ordinary circumstances, be considered reasonable  
time. The investigation will be postponed for good and sufficient  
reasons on request of either party."

It is apparent from the record that the dates of the two offenses under investigation were September 18 and September 21. The hearing was originally scheduled for October 2, 1981 which is not within 10 days of either occurrence.

The Board also notes that the Organization made a timely objection at the hearing regarding the fact the original hearing date was outside the 10-day limit. Additionally, we are unimpressed by the justification offered by the Carrier at the hearing. It was stated by the hearing officer:

"The reason it was set up that way, it was another investigation scheduled for October 2, when just previous to this, when the clerk typed this up to make convenient for all concerned, she made it at the same time."

This is insufficient justification in the mind of the Board for failure to schedule the investigation as prescribed by the Rules. It has been stated before that when a hearing is scheduled outside the time limits, a prima facie violation of Rule 19(a) is established. The burden then shifts to the Carrier to show extenuating circumstances. In this case, the record does not establish the Carrier fulfilled their burden in this respect.

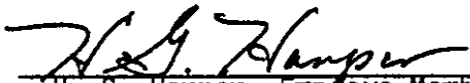
In view of the foregoing, the Claim is sustained without regard to the merits. The Carrier is ordered to compensate the Claimant in accordance with Rule 19(a).

AWARD

The Claim is sustained.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: \_\_\_\_\_

1/15/85