

PUBLIC LAW BOARD NO 3460

Award No. 59
Case No. 59

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

- "1. The dismissal of section laborer K.E. Hendrickson for alleged violation of rule 702 of the Rules of the Maintenance of Way Department "for your failure to protect your assignment section-man at Sled Unit No. 1 at Dunn, Minnesota on June 11, 1981, and June 12, 1981" was unwarranted, without just and sufficient cause and in violation of the agreement.
2. The claimant shall be reinstated with all seniority and other benefits unimpaired and he shall be compensated for all wage loss suffered."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that Mr. Hendrickson, a section-laborer, had a seniority date of 8-7-78. On Thursday, June 11 and Friday June 12, 1981, regularly scheduled work days for Mr. Hendrickson, he was absent from his assignment and failed to notify proper authorities of his intended absences or to request

permission for such absences. According to the record, on Monday June 15, 1981, claimant called Carrier and left word that he had been in a car accident and would be going for "dry out" treatment. At that time he informed Carrier as well that he would be unable to protect his assignment until further notice. On the same date, June 15, 1981, Carrier addressed a letter to claimant (received on June 17) establishing an investigation and charging him with failure to protect his assignment in violation of Company rules. The hearing was scheduled for June 23, 1981. A copy of the notice was sent to claimant's Vice General Chairman. Following investigation, which claimant did not attend, nor did his representative, claimant was dismissed from service, thus triggering this dispute.

The Petitioner argues first that claimant was not accorded a fair and impartial hearing on two grounds. First, that he had requested a postponement of the hearing, which was not granted, and second, that the local chairman of the Organization had not been given a copy of the notice of the investigation. In addition, the Organization argues that the imposition of discipline in this instance was harsh and improper under all the circumstances, and also without just cause.

Carrier maintains first that it received no request for postponement

of the investigation, but that had it received such request it would have granted it. Furthermore, Carrier notes that it served a copy of the notice of the investigation upon the local Vice General Chairman which served to meet its obligations under the agreement. With respect to the merits of the dispute, the Carrier argues that there is no doubt of claimant's failure to notify anyone of his intended or impending absences on the two days involved, and his failure to protect his assignment on those days. In addition, with respect to the discipline, Carrier believes that it was appropriate under the circumstances, particularly in view of the fact that during claimant's relatively short tenure, he had been given a 30-day suspension on another disciplinary basis.

The Board notes that there was no evidence whatever of claimant having requested a postponement of the investigation. He did not do so in writing and there is no acknowledgement of any telephone call by claimant for that purpose. Thus, there is no ground based on facts presented to sustain the Petitioner's allegations that Carrier failed to grant a postponement when requested. With respect to the second procedural argument made, it appears that rule 40 (a) provides that "the appropriate local organization representative" shall be given a copy of the investigation notice. There is no specificity with respect

to which officer of the organization is the appropriate local organization representative. In the instant situation and in accordance with well-established practice, Carrier did indeed notify the Vice General Chairman who had handled disciplinary matters throughout the district concerned in the past. There is no basis for the Organization's allegation therefore that Carrier failed to comply with the rules in terms of Union notification.

On the merits, there is no doubt but that claimant failed to protect his assignment on the two days and did not telephone anyone until several days later. His alleged problem of an automobile accident and being "dried out" was only transmitted to Carrier on the Monday following his two absences. Thus, there can be no question but that he was guilty of the basic charges leveled against him.

While there were no procedural errors committed by Carrier in the handling of this matter, the entire circumstances surrounding this particular disciplinary matter were somewhat peculiar. The fact that claimant did not appear at the investigation and had no representation is troublesome although not fatal as a flaw. Another consideration which must be evaluated is the fact that there was indeed a prior disciplinary incident of a serious nature, also involving an alcohol-related incident.

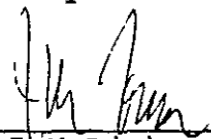
This fact, taking into consideration claimant's relatively short tenure with Carrier, makes it apparent that discipline was appropriate under the circumstances of this particular infraction. However, it is believed that the punishment has now served its purpose and claimant should be reinstated to his former position with all rights unimpaired including seniority. He should not, of course, receive any compensation for time lost since the period out of service must be considered to have been a disciplinary layoff. This appears to be the most reasonable solution to this problem under the peculiar circumstances surrounding it.

AWARD

Claim sustained in part; claimant shall be reinstated to his former position with all rights unimpaired but without compensation for time lost as indicated above.

ORDER

Carrier will comply with the award herein within 30 days from the date thereof.



I.M. Lieberman, Neutral-Chairman



W. Hodynsky, Carrier Member

St. Paul, Minnesota



F.H. Funk, Employee Member

December 14, 1986