

PUBLIC LAW BOARD NO. 3542

Parties
to the
Dispute

Pennsylvania Federation Brotherhood of
Maintenance of Way Employes

vs.

Consolidated Rail Corporation

Case No. 26
Award No. 9

STATEMENT OF CLAIM

(a) That S. Turner, Foreman, be restored to service with seniority and all other privileges and benefits that are a condition of employment either by agreement or practice. That he be compensated for all time lost from the time dismissed from all service of the Carrier.

(b) That his record be cleared of all charges brought against him by the Carrier.

OPINION OF THE BOARD

Claimant S. Turner is a Foreman in Carrier's employ at Conway, Pennsylvania. On October 28, 1981, he was notified to appear at a hearing on November 6, 1981 to answer the following charges:

1. Violation of Rule E of the Rules of the Transportation Department in that you were assuming the attitude of sleep at approximately 4:30 a.m. on October 24, 1981, while on duty at Conway, PA.
2. Violation of Rule D of the Rules of the Transportation Department during your tour of duty on October 23, 1981.

-2-

3. Failure to perform the instructions issued to you by J. B. Mascara, Assistant Supervisor Track, for your tour of duty on October 23, 1981.

A hearing into the charges was held on November 6, 1981. Claimant was not in attendance. The Organization contends that Claimant never received the notice of hearing. The record reveals, however, that on November 4, 1981, Claimant was aware of the hearing date of November 6, 1981. Prior to and during the hearing, the Organization requested that the hearing be postponed in order for the Organization representative to locate Claimant and find out why he did not appear. This request was denied and the hearing was held as scheduled without Claimant in attendance. As a result of that hearing, Claimant was found guilty as charged and dismissed from Carrier's service.

This Board has carefully reviewed the record of this case and must conclude that Carrier acted in a harsh and unnecessarily one-sided manner when it denied the Organization's representatives a postponement of the November 6, 1981, hearing, at which Claimant was not in attendance. It would like to point out that in the strictest and most technical sense of the work, Carrier had a right to proceed and no rule violation took place. Sound labor relations, however, would dictate that a postponement be granted.

This Board will be far more critical of "hurry-up" hearings in

-3-

the future than it has been in this case. Under the Railway Labor Act, Carrier is granted the right to hold disciplinary hearings. It is responsible for ensuring objectivity in the hearing and establishing procedures that will be followed. Given this unique system and the fact that Carrier controls the trial of employees it has charged, it has a responsibility to make sure that the hearing is fair and that all elements of due process are guaranteed to the Claimant. The hearing must be technically fair, in accordance with the Agreement, and must have the appearance of fairness even to the most unsophisticated observer. The hearing in the instant case fell short of that obligation.

As to the merits of the case, there is no question that Claimant was sleeping on duty. This Board is fully aware that sleeping on the job is a major offense and that it is deserving of serious discipline. In every case, however, it is not deserving of immediate dismissal from service. It is the opinion of this Board that Carrier can make its point with a suspension equal to the time Claimant has been held out of service. The Board is directing that Claimant be returned to work with seniority intact but without pay for lost time or benefits. Claimant should be aware that any future behavior of this type will most certainly result in his permanent dismissal from service.

-4-

AWARD

Claimant shall within 30 days of the adoption of this award be returned to service per opinion of the Board.

R. E. Dennis 9/29/84
R. E. Dennis, Neutral Member

J. Dodd
J. Dodd, Employee Member

R. O'Neil
R. O'Neil, Carrier Member