

NATIONAL MEDIATION
BOARD

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ADJUSTMENT BOARD

PUBLIC LAW BOARD NO. 374

AWARD NO. 139 and 140

UTU Case No. 52520/610
Carrier No. 4-(87-1499)
Docket No. 143

UTU Case No. 52521/610
Carrier No. 4-(87-1500)
Docket No. 144

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION (C&T)

AND

CSX TRANSPORTATION, INC. (FORMER B&O RAILROAD CO.)

STATEMENT OF CLAIMS:

"Appeal in the case of Road Flagman T. A. Sports (1010128), who was assessed the discipline of thirty (30) days actual suspension following an investigation held on Thursday, September 18, 1986, when it was determined that T. A. Sports was found guilty of falsely claiming time when called to work as Flagman for contractor at Kensington, Maryland, on July 31, 1986, August 13, 1986 and August 16, 1986."

"Appeal in the case of Road Flagman W. J. Hunter (1010164), who was assessed the discipline of thirty (30) days actual suspension following an investigation held on September 18, 1986, when it was determined that W. J. Hunter was found guilty of falsely claiming time when called to work as Flagman for contractor, Kensington, Maryland, on September 3, 1986."

FINDINGS:

The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

On September 5, 1986 separate letters of charge were issued to each of the Claimants charging them with "responsibility in connection with

falsely claiming time when called to work as flagman for contractor at Kensington, Md." The alleged false time claims by Claimant Sports were shown to have been submitted for July 31, 1986, August 13, 1986 and August 16, 1986. In the case of Claimant Hunter the alleged false time claim was for September 3, 1986.

The investigation originally scheduled for September 10, 1986 was postponed upon request of the Local Chairman until September 18, 1986. As a result of the investigation both Claimants were found guilty as charged. By separate letters dated October 24, 1986 both Claimants were so advised and notified that they were assessed discipline of thirty (30) days actual suspension.

The Carrier asserts that both investigations were conducted in a fair and impartial manner and that the evidence developed during the course of each investigation proved conclusively that each Claimant was guilty as charged. It further contends that the violation was of such serious nature as to justify the discipline imposed.

The Organization contends that the Carrier committed two procedural defects in using a tape recorder in lieu of a stenographic report under Agreement Rule 17(e) and in not rendering its decision promptly as required by Rule 17(c).

The Organization also contends that the Carrier failed to meet its burden of proof that the Claimants made false time claims and asserts that they were not properly advised by the Carriers as to what corrective action should be taken when the contractors did not show up for their assignment.

Agreement Rule provides as follows:

(c) "Hearings will be held within seven (7) days, if possible, and employees promptly advised of decision."

(e) "Stenographic report will be taken of all hearings held under this rule and the employee involved or his representative shall be furnished with a copy of same"

As the Board stated in Award No. 129 we find no merit in the Organization's position regarding the Carrier's use of a tape recorder instead of a stenographer to record the investigation as long as a stenographic report is then prepared from the tape and is provided to the Claimant or his representative as required by Rule 17(e). The use of a tape recording device at investigative hearings is not, in and of itself, a violation of the Agreement.

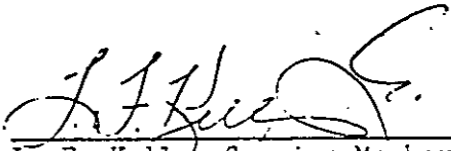
Regarding the other procedural objection raised by the Organization, however, the Board agrees that the Carrier did not meet its obligation under Rule 17(c) of the Agreement to provide prompt advice of the Carrier's decision. Thirty-six days elapsed in each case from the date of investigation until the notification by the Carrier of its assessment of discipline. The Carrier has not demonstrated that the time lapse was reasonable. As the Carrier did not comply with Rule 17(c), the Board will sustain these claims.

AWARD:

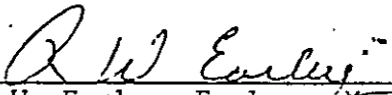
The claims are sustained.

ORDER:


The Carrier is directed to comply with this Award within thirty (30) days of its issuance shown below.



L. F. Kell, Carrier Member
Dissenting



R. W. Earley, Employee Member



Jack Warshaw, Chairman
and Neutral Member

JUN 27 1988

Bethesda, MD