

SEPT 18 89

PUBLIC LAW BOARD NO. 4104

Case No. 31

MS	SWK
PARTIES TO DISPUTE:	
Burlington Northern Railroad	
vs.	
Brotherhood of Maintenance of Way Employees	

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way
Employees

vs.

Burlington Northern Railroad

STATEMENT OF CLAIM:
Brotherhood that:

"Claim of the System Committee of the

1. The ten (10) days suspension imposed upon Track Inspector R.G. Pearson for 'alleged-violation of Rule 500A of Maintenance of Way Department' was without just and 'sufficient cause and on the basis of unproven charges. (System File 4 GR GMWA 84-6-21 B)

2. The Claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF THE BOARD: This dispute concerns a ten day suspension assessed by Carrier against Claimant, Track Inspector R.G. Pearson. On January 17, 1984 Claimant was assigned to inspect the tracks in a motor car. On January 23, 1984 Roadmaster Boomhower was informed that no track permits were issued to Claimant that would have allowed him to inspect track. The relevant reports were reviewed and due to the discrepancy that was revealed an investigation was held on February 6, 1984.

The Organization appealed Carrier's suspension of Claimant. Carrier denied the appeal. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that Carrier did not afford Claimant a full and impartial investigation as required in Rules 40A and 40D. It alleges that Rule 40A was violated when Carrier exceeded the requirement that the investigation will be held not later than

fifteen (15) days from the date of the occurrence. The alleged fraudulent Track Inspection Report was dated January 17, 1984 and the investigation was not scheduled until February 6, 1984, 21 days later.

Secondly, the Organization asserts that Rule 40D of the Agreement which states that a decision shall be rendered within thirty (30) days following the investigation was violated. It contends that the investigation concluded at 11:16 a.m. on February 6, 1984 and the discipline was not assessed until 3:50 p.m. on March 7, 1984. Thus, the Organization avers that Claimant had been denied his due process rights in the handling of the investigation. Therefore, it asks that the claim be sustained on procedural grounds alone.

As to the merits, the Organization asserts that Claimant performed his assigned duties on the date in question. It maintains that Carrier never challenged Claimant's testimony as to his responsibilities and tasks on January 17, 1984. It avers that Claimant was disciplined not because he failed to properly perform his duties but because he recorded, on the track inspection record, "motor car" as the mode of transportation used to inspect track, instead of "locomotive" or "train". The Organization asserts that Claimant's testimony in this case revealed that Roadmaster Boomhower issued instructions to the track inspectors to show motor car as mode of transportation regardless of what was used. It maintains that although Mr. Boomhower denied such instructions, he did so to avoid problems with his supervisor, Mr. Fricke.

Accordingly, it contends that the testimony is unreliable and unsubstantiated in this case. Accordingly, it asks that the claim be sustained.

Carrier, on the other hand, asserts that it did not violate the Agreement here. First, Carrier contends that an officer of the Company did not obtain knowledge of the Track Inspection Report until January 23, 1984. The investigation was scheduled for February 6, 1984, fourteen (14) days later, in compliance with the time limits of Rule 40A. Second, Carrier maintains that the discipline was assessed Claimant twenty-nine days after the conclusion of the hearing - again in compliance with the provisions of Rule 40D.

As to the merits of the claim, Carrier points out that Claimant was never instructed by Roadmaster Boomhower to falsify his Track Inspection Record. It asserts that the testimony of Boomhower clearly denies that any such instructions were ever issued by himself. Carrier assumes that Claimant's testimony to shift the blame to someone else is his only defense for his dishonesty. Under these circumstances, Carrier argues that it properly found Claimant guilty as charged and insists that a ten day suspension is appropriate here. Thus, for the foregoing reasons, Carrier asks that the claim be denied.

After reviewing the record evidence, we are convinced that the procedural arguments must fail. A Carrier official did not receive knowledge of the Track Inspection Report until January 23, 1984 and the investigation was timely scheduled in accordance with Rule 40A.

Additionally, Carrier adhered to the time limit provisions of Rule 40D by assessing discipline within thirty days of the conclusion of the hearing. Thus, we conclude that Carrier afforded Claimant a full and fair investigation. However, it is necessary to remind Carrier that all technical contract requirements must be met. While not so here, both parties are on notice that failure to adhere strictly to contract requirements may, in proper cases, result in the claim being sustained or denied, as the case may be, on procedural grounds alone.

As to the merits of the claim, the Board must conclude, that the ten day suspension was excessive.

Instead, an Official Letter of Reprimand is an appropriate penalty. Accordingly, we must sustain the claim to this extent.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

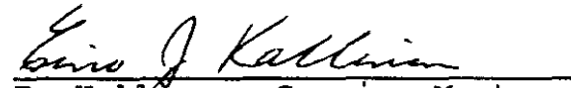
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD:

Claim sustained to the extent indicated in the Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

9/5/89