BEFORE
PUBLIC LAW BOARD NO. 550

AWARD NO. 65

UNITED TRANSPORTATION UNION (T)

VS

PENN CENTRAL TRANSPORTATION COMPANY

DOCKET NO. TD-748

STATEMENT OF CLAIM:

EASTERN REGION: (New York District) Case No. T-24459 Request that any reference to thirty (30) days' restriction imposed upon Trainman A. O. Hoffman, as a result of the following charge, be expunged from his record and that he be compensated for all time lost in connection therewith:

"Unnecessary delay to P.R.R. Train No. 194 at Washington Terminal, October 5, 1966."

OPINION OF BOARD:

This claim arises from an incident occurring on October 5, 1966, while Claimant, employed by Carrier for 46 years at the time, was assigned as baggageman on a train operating from Washington, D. C. to New York.

Washington Terminal Company owns and operates the station and tracks leading into the passenger station (Union Station) at Washington, D. C. which Carrier uses for its trains by agreement with Washington Terminal Company going back to 1907. The agreement provides that Carrier's trains so operating are under the jurisdiction of Washington Terminal Company and the crews thereon subject to the operating rules and regulations of Washington Terminal Company, at such times.

On October 5, 1966, passenger train on which Claimant was baggageman was delayed 8 minutes shortly after it had left the passenger platform at Union Station.

By letter dated October 17, 1966, Claimant was notified to attend a trial on October 19, 1966 at Washington, D. C. on the following charge:

"Unnecessary delay to P.R.R. train No. 194 at Washington Terminal October 5, 1966."

The Claimant did not appear at the appointed time and trial was conducted in absentia by the Station Master, Union Station of Washington Terminal Company.

By letter dated November 17, 1966, Claimant was notified by Carrier that the Manager of the Washington Terminal Company had found him responsible for the delay of train. Claimant was further informed that because of his actions, Washington Terminal Company had restricted him from operating in and out of the Washington Terminal for a period of 30 days, commencing December 5, 1966 (18 days after date of this notification).

Thereafter, Claimant appealed from the restriction. Appeal was denied by Superintendent-Personnel after discussion with Claimant. After unsuccessful appeal on higher levels, the parties agreed to submit the dispute to this Board.

The only testimony at the trial conducted by Washington Terminal Station Master was that given by W. J. McKay, who identified himself as Conductor of P.R.R. Train #194, the train involved in the subject incident.

Mr. McKay testified that when the train had stopped, he called the nearby tower and was told by them that the train had been stopped by personnel on the train and that it was the "impression" of tower that the train was stopped "for steam-heat failure."

Mr. McKay's further testimony was that "Further investigation revealed that the Asst. Baggage Master, Mr. A. O. Hoffman, had stopped the train because he was getting no steam heat in the open mail storage car... and he had stopped the train to have the car inspectors get steam heat into that car for him."

Further testimony of McKay was that he had earlier received an "ok on Brakes and Steam" on all sixteen cars and that he had himself observed steam being discharged from drip valves and minor steam leaks and that it was a mild evening in Washington, D. C. at that time.

Claimant's Organization makes the following contentions:

(1) The 30 day restriction was a disciplinary imposition on Claimant by Carrier. It was a deprivation to Claimant in that it barred him from working his regular assignment or any assignment between New York and the District of Columbia for a period of 30 days.

(2) The 30-day deprivation imposed was in violation of Claimant's procedural rights under Rule 6-A-6(a). Said rule provides that written notice of discipline shall be given to employes within 15 days of trial date and at least 15 days prior to effective date of discipline (except for major offenses). In this case, the trial was completed on October 19, 1966 and Claimant was advised of restriction by notice dated November 18, 1966.

It is Carrier's position that although the trial in this matter was held in compliance with discipline rules of the Agreement (in anticipation of possible discipline) there was not a decision therefrom constituting discipline - i.e. reprimand, suspension or discharge. The Decision made was to impose a restriction. Rule 6-A-6 is therefore inapplicable. Even if it were, in Carrier's view, the requirements of said rule are directory, rather than mandatory; no nullifying consequences on the disciplinary imposition are stipulated therein for failure to notify within the 15-days period.

Carrier contends also that inasmuch as the restriction was imposed by the Washington Terminal Company, not a party to the proceedings here, this Board is without authority to cancel the restriction imposed on Claimant by them.

Carrier also calls attention to the absence of any assertion in the record by Claimant or his Organization that the former had not, in fact, been guilty of the impropriety charged, regarded by Carrier as "tacit recognition" of Claimant's culpability in the regard alleged.

Additionally, Carrier contends that Claimant and his representatives are barred from that part of compensation remedy caused by attendance at trial inasmuch as no such claim was presented in writing "not later than thirty days from the date of the occurrence on which the claim is based," a requisite under Rule 4-P-1 for entitlement to such compensation.

Carrier also contends that even under a decision by us that Claimant should not have been restricted, he would not, in any event, be entitled to compensation "for all time lost." Given the long advance notice of restriction, Claimant had opportunity to bid on assignments other than those using the Washington Terminal. Accordingly, at most, Claimant could only properly claim the difference between the amount he could have earned on such assignments compared to that which he would have earned on his regular assignment.

FINDINGS

Claimant was charged by a party other than Carrier under a procedure for discipline actions stipulated by the Agreement between Penn Central and the United Transportation Union - the parties to the jurisdiction of this Board. As result of trial, Claimant was barred for thirty days - not by Penn Central, but by the "trying" party, Washington Terminal Company - from working on the latter's property, used by Carrier and necessary for carrying out of Claimant's regular duties - an action which thereupon was enforced by Penn Central.

Carrier contends that the result was not a disciplinary action.

We believe that the situation before us has, in respect to the effect on the employe, the essential characteristics of a "discipline" measure, i.e. a deprivation imposed for alleged cause. Even, if cognizance is taken of Carrier's point that the result was not necessarily the same as suspension inasmuch as Claimant could have and may have bidded into other assignments in lieu of his Washington runs, there was nevertheless, clearly an alteration from Claimant's contract rights in reaction to an alleged misdeed by him.

On the other hand, Carrier seems, in essence, to plead that it was helpless to do anything about this inasmuch as Washington Terminal Company had sole rights and there was no way that Penn Central could impose on them an employe barred from use of their facilities.

We have a great deal of sympathy with this aspect of Carrier's position, but we cannot find in the evidence or in any Rules in the Agreement, grounds for exempting Carrier from the provisions of its Agreement, for circumstances such as these. And it is the Agreement between the parties who are before us now, that controls the rights and obligation of Carrier and Employes for situations of this kind.

In sum, we believe that for an action by Carrier - and it was an action by Carrier, even if in compliance with an imposition by another under another contract with Carrier - to achieve extraction of an employe for 30 days from his regularly scheduled assignment to which he was otherwise by seniority entitled - whether regarded as discipline for cause or seniority right denial for reason - Agreement Rule standards and Agreement Rule procedures must be followed. The responsibility for so doing is on those who are signatories to said Agreement.

In the instant case, the record shows that Claimant did not have the benefit of the procedural rights given him by Rules 6-A-6(a) and 6-A-6(b).

As to 6-A-6(a), it is provided therein that discipline following trial and decision must be imposed by written notice thereof within fifteen days of the date the trial is completed, and at least 15 days prior to the date on which the discipline is to become effective (except for "major" offenses, not involved here).

The trial of the subject Claimant was concluded on October 19, 1966. He was notified on November 18, 1966 (31 days later) that he was barred from service at the Washington Terminal. This exceeds the permitted time limit.

Rule 6-A-6(b) provides that when disciplinary suspension is imposed, the application thereof shall be deferred, subject to invocation if and when another disciplinary suspension is received by employe within the succeeding six months period. In this case, a 30-day actual work deprivation was imposed on Claimant by reason of denial to him of access to his usual work locale.

The claim will therefore be sustained on these procedural grounds.

AWARD:

Claim sustained. Carrier is directed to make restitution within thirty days, of time lost by reason of restriction imposed.

/s/ Louis Yagoda

LOUIS YAGODA, CHAIRMAN & NEUTRAL MEMBER

/s/ S. J. Wilson

S. J. WILSON, CARRIER MEMBER

/s/ P. J. McNamara

P. J. MC NAMARA, EMPLOYE MEMBER

DATED August 23, 1971