PUBLIC LAW BOARD NO. 5850

Award No. 164
Case No. 164

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes)

(The Burlington Northern Santa Fe Railroad)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on November 11, 1999, Mr. R. P. Edwards was assessed a Level-1 Formal Reprimand for his alleged violation of Engineering Instruction 22.5 and Rules 1.15 and 1.13 of the Maintenance of Way Operating Rules Effective January 31, 1999 as revised in conjunction with his alleged absence from duty without authority on September 27, 28 and 29, 1999.

2. As a consequence of the Carrier's violation referred to above, the Claimants shall have the Level-1 Formal Reprimand removed from his record.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant did not work September 27, 28 and 29, 1999, nor had he authority to be off.

An investigation was scheduled for October 7, 1999 which Claimant did not attend, nor did the Organization. The evidence adduced thereat clearly established Claimant's culpability for the charges assessed.

Although Claimant did not sign for the letter establishing the investigation, the Carrier discharged its obligation under the Rule by depositing in the mail the notice properly addressed with a request for a signed receipt of acceptance.

The local representation who was furnished a copy of the notice is not, according to the group representing the Claimant, the proper representative as required by the parties' collective bargaining agreement. In analyzing this contention, this Board reviewed the applicable collective bargaining provision, specifically, Rule 40 INVESTIGATIONS AND APPEALS paragraph (c), which states in part:

> "At least five (5) days advance written notice of the investigation shall be given the employe and the appropriate local organization representative, in order that the employe may arrange for representation by a duly authorized representative of any employe of his choice, and for presence of necessary witnesses he may desire."

The above provision was cited by the Organization in support of its contention. In addition, the Organization stated in its appeal to the Carrier, the following:

> *"The Claimant is a former ATSF employee and is a member of the ATSF System Federation, Carrier allegedly notified Vice General Chairman Tony Archibald of the BN System Federation of this investigation. Rule 40(c) of the 1982 BN Agreement requires the Carrier to notify the* ***appropriate Local Organization Representative.*** *Mr. Archibald is not the appropriate local organization representative."*

In response to this allegation, the Carrier responded as follows:

> *"Routinely, when hearings are scheduled, the Carrier notifies the local representative or a system representative that regularly represents employees in investigations at the location where the alleged Rule violation occurred. In this case the Carrier scheduled the hearing at Galesburg, Illinois and in cases where a hearing is scheduled in that area of the Railroad the Carrier notified Vice General Chairman Archibald."*

In reviewing the record of this case, the Board did not find any evidence that the Organization;

(1) refuted the Carrier's contention that it followed an established practice;
(2) challenged or objected to such a practice; or
(3) provided an explanation how Rule 40 (c) prohibits such a practice and/or how the rule was violated when notice was sent to Vice General Chairman Archibald who is a "local" representative in the area where the investigation was held.

Whether or not the Organization could prove that the Carrier's handling in this case was not the practice routinely followed; could show that it has objected to such handling in the past; or provide a clear explanation why Rule 40 (c) was violated in this particular case, this Board does not know and will not speculate. The point to recognize in this case is, the Organization did not provide such information. As such, there is no basis in this case for the Board to find the Carrier in violation of Rule 40 (c) of the parties' collective bargaining agreement.

Claimant was absent without authorization for September 27, 28 and 29, 1999. A formal reprimand has been assessed. Evidence adduced at the haring fully supports the charges.

AWARD

Claim denied

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli, Labor Member

Thomas M. Rohling, Carrier Member

Dated: August 6, 2001