

PUBLIC LAW BOARD NO. 6089

Martin H. Malin, Chairman & Neutral Member
R. B. Wehrli, Employee Member
D. A. Ring, Carrier Member

The Organization contends that Claimant was denied his right to a fair hearing because the transcript was inaccurate. The Organization further argues that the evidence failed to support the charge. Specifically, the Organization maintains, the evidence shows that Claimant was confused as to whether he was supposed to work on August 25, 1996, and that Carrier was

responsible for Claimant's confusion.

The Organization observes that initially there was an agreement among the Carrier and the employees to provide the employees with an extended Labor Day holiday by having the employees work August 24 and 25, and receive August 30 and September 3 off. Thereafter, the employees' regular work schedule changed from Monday through Friday to Sunday through Thursday. To continue the plan for an extended Labor Day holiday, it became necessary to substitute working on August 24 and September 6 in exchange for taking off on September 1 and 3. The changes, in the Organization's view, resulted in confusion among the employees as to whether they still were required to work on Sunday, August 25.

The Organization recognizes that Claimant was the only member of his gang who was absent without specific authority to be off on August 25. The Organization explains this occurrence as resulting from Claimant's not residing at the same motel as the other employees and therefore, not receiving the clarification that the other employees received after work. The Organization submits that there was no motive for Claimant to take August 25 off knowingly, as Claimant lost pay that day and, because he worked the day before and the day following was not in a position to go home for the day off.

Carrier contends that Claimant was afforded a fair hearing and that it proved the charge by substantial evidence. Carrier disputes the claim that Claimant was confused and maintains that it was Claimant's responsibility to seek clarification if he had any questions.

The Board has reviewed the transcript carefully. We do not agree that it contains inaccuracies which denied Claimant a fair hearing. Minor typographical errors do not constitute a denial of an employee's due process rights.

Accordingly, we turn to the merits of the dispute. Claimant was a member of a system gang. Prior to August 19, 1996, the gang's regular rest days were Saturday and Sunday. Because many members of the gang lived substantial distances from where the gang was working, the employees and Carrier agreed that the employees would work two additional days to substitute for Friday, August 30 and Tuesday, September 3, thereby enabling them to have an extended Labor Day weekend to travel home and return. The original plan was for the employees to work on Saturday and Sunday, August 24 and 25.

During the week of August 19, however, Carrier changed the employees' rest days to Friday and Saturday. Consequently, August 25 became a regular workday, as did September 1. To enable the employees to retain the extended Labor Day holiday,

the substitute days were changed, with the employees working August 24 and September 6 in lieu of September 1 and September 3.

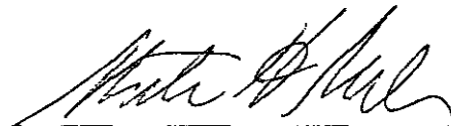
Our review of the record convinces us that there is substantial evidence to support the rejection on the property of Claimant's contention that his confusion concerning which days he was to work excused his absence on August 25. Under the original plan, Claimant was to work on August 25 to substitute for September 3. Under the new scheme, August 25 became a regularly scheduled work day. Under both schemes, the employees were required to work August 25. It is unclear how any confusion about work days could have resulted in Claimant believing that he was not required to work on August 25.

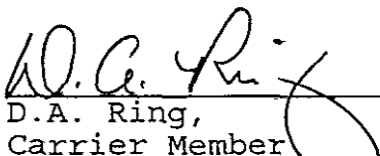
Moreover, the record reflects that on August 22 on the bus the Track Supervisor explained the schedule changes and the dates the employees were expected to work. Although Claimant testified that he was confused by this explanation because other employees on the bus were talking, he admitted that he never asked for clarification. Moreover, the Supervisor testified that he took questions from employees after briefing them on the bus and that, in fact, he took questions concerning the changes in the schedule. If Claimant in fact was confused, it was his responsibility to ask for clarification. He cannot attribute his confusion to Carrier where he failed to make any attempt to seek clarification.

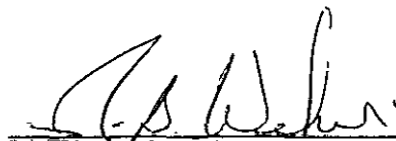
We conclude that Carrier proved the charge by substantial evidence. The thirty day suspension was in accordance with Carrier's UPGRADE policy and, in light of Claimant's prior disciplinary record, we cannot say that it was arbitrary, capricious or excessive.

AWARD

Claim denied.


Martin H. Malin, Chairman


D.A. Ring,
Carrier Member


R.B. Wehrli
Employee Member

Dated at Chicago, Illinois, September 18, 1998.