

Case No. 1 Award No. 1

STATEMENT OF CLAIM:

Following a careful review of the evidence of record, the Board finds that the claim must be sustained because the Claimant did not receive a fair and impartial trial. The Board would be remiss in not observing the Carrier's strong advocacy at the Board's proceedings. However, its arguments at that time cannot overcome the fatal errors of the Hearing Officer during the hearing held on August 12, 1996.


In view of evidence showing how poorly this investigation was handled, a few words are required with respect to the role of the Carrier in the disciplinary process. The course of the disciplinary proceeding is under the control and direction of the Carrier. The language of the Parties' Agreement, when it addresses matters related to the Employer/Employee relationship, makes it clear that the notion of fairness is fundamental to that relationship. Indeed, Investigative Rule 31, which in part provides that an employee "shall not be discharged, suspended or otherwise disciplined without just cause and without a fair and impartial hearing," is a provision that advances that basic principle. In effect, it is a guarantee that the Carrier will deal with its employees in an impartial fashion in accordance with the commonly accepted standards of fairness. It is not permitted to cull or select evidence or facts for presentation which only tend to demonstrate or show fault of the person under investigation.

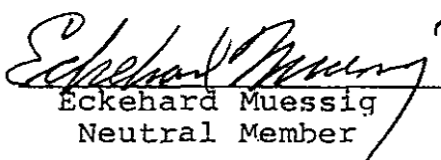
The most glaring impropriety with respect to the fairness of the hearing was the Hearing Officer's denial of the Organization's request to have Road Foreman Robert Buchanan ("Buchanan") appear as a witness at the investigation to testify. His judgment that it is not "the Company's position to provide witnesses" is just plain wrong. It is inconsistent with the Carrier's lead role in the investigative process. Certainly, the Organization cannot "willy nilly" request witnesses or go on a fishing expedition that has no reasonable expectation for a constructive contribution to the process. Moreover, it has an obligation, if challenged, to explain what it believes the witness can contribute to the orderly development of facts relevant to the incident under investigation. The Organization clearly did so in this case, not once, but on a number of occasions. For example, the testimony of the Claimant as well as the Supervisor of Locomotive Engineers provided a reasonable showing that Buchanan may have had significant information as to the cause of the derailment. When the Carrier refuses to call a witness, after the Organization had provided its reason for the witness, the burden shifts to the Carrier to provide a reasonable explanation for denying the request.

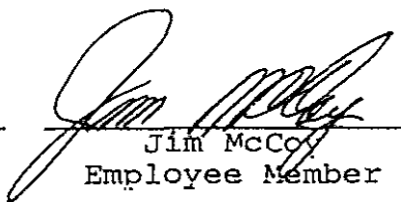
In summary, without belaboring the point any further, this Board finds that the on-the-property proceedings did not meet the commonly accepted standards of fairness and impartiality. The parties contracted to provide the employee the right to a fair and impartial trial before any disciplinary action could be taken. If that procedural safeguard can be circumvented by the kind of process used here, the Parties' contract would have little substance. For any disciplinary action to have a legitimate foundation, the "fair" and "impartial" trial agreed to in Rule 31 must occur.

AWARD

The claim is sustained. Back pay will be determined by a compilation of the average earnings of the Engineer immediately above and below the Claimant on the Claimant's Seniority Roster.


Jerry Shepherd
Carrier Member


Eckehard Muessig
Neutral Member


Jim McCoy
Employee Member

Dated: 9/30/98