

AWARD NO. 226
Case No. 226

Organization File No. B14708113
Carrier File No. 2013-148757

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

1. The Agreement was violated when, following the investigation of Claimant J. Thrift on July 11, 2013, the Carrier failed to provide Claimant J. Thrift or the Organization with a copy of the Investigation Transcript or Notice of Discipline as required by Rule 25, Section 1.
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall now provide Claimant J. Thrift and the Organization with copies of the Investigation Transcript and Notice of Discipline.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Claimant was summoned to a formal investigation conducted on July 11, 2013, at which he was charged with various violations of the Carrier's rules. The subject matter of that investigation is not relevant to this dispute. Before the Carrier imposed discipline, Claimant requested a waiver and accepted responsibility for his actions. Consequently, the Carrier issued a letter dated July 23,

2013, setting forth the conditions of his waiver, including the discipline agreed upon by Claimant and the Carrier. The waiver contained the statement, "In accordance with BMW Agreement Rule 25, Section 2 (b), by signing this waiver you agree that this discipline is final with no right of appeal." Claimant signed the waiver letter, accepting the discipline and the other conditions set forth therein, on July 31, 2013.

The Organization has filed this claim asserting that the Carrier violated the Agreement by not providing Claimant with a notice of discipline or a transcript of the investigation within twenty days of the close of the investigation. It relies upon Rule 25, Section 1 (f), which states:

Notice of discipline must be given within twenty (20) days following the close of the hearing. Copy of the transcript shall be given to the employee and two (2) to his representative.

With respect to the notice of discipline, the Carrier submits that the waiver letter, which summarized the charge against Claimant and set forth the discipline imposed, met the Agreement's requirement. It was issued within twenty days of the hearing. We agree with this conclusion.

More generally, the Carrier cites Claimant's agreement that the discipline is final and he has no right of appeal. This statement, says the Carrier, precludes the filing of this claim. With that, we also agree.

We are compelled to make additional findings in this case. Waivers generally occur before an investigation commences. In such cases, the employee accepts an agreed-upon level of discipline and there is no hearing. Consequently, there is no transcript. In some cases, the employee under charge may choose to stop an investigation that is already in progress in order to accept discipline. As the investigation is not completed in such a case, no transcript would be prepared. Finally, as

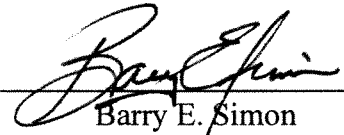
happened in this case, the employee goes through the investigation process and sees what the Carrier has in support of issuing discipline. Fearful of more severe discipline, the employee accepts a lesser level than he expects to otherwise receive, and the Carrier gets to close the case without it being subject to the appeal process. That decision may occur the instant the hearing is concluded, or may happen right before the Carrier's deadline for issuing discipline. Regardless of when it occurs, there is no practical need for a transcript. If the Organization's claim had merit, the Carrier would be required to prepare a transcript even when the employee walks out of the hearing and immediately agrees to a waiver. That would be an absurdity. Arbitrators apply a Rule of Reasonableness, which states:

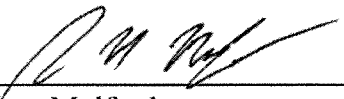
An interpretation giving a reasonable meaning to contractual terms is preferred to an interpretation that produces an unreasonable, harsh, absurd, or nonsensical result. Good faith is an element of reasonableness. (The Common Law of the Workplace: The Views of Arbitrators, 2nd ed., National Academy of Arbitrators (BNA, 2005) p.81)

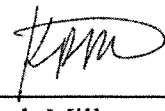
Another way to look at this case is with the understanding that Claimant's waiver was pursuant to Rule 25, Section 2 - Alternative to hearings. This provision allows an employee to be disciplined without a hearing when the involved employee, his union representative, and the authorized official of the Company agree in writing. Thus, the employee elects to "waive" the investigation. When he did so, Claimant effectively rendered the investigation he attended nonexistent. For all intents and purposes, it did not happen. Therefore, there can be no requirement to provide a transcript.

We find, based upon the record before us, that the Agreement was not violated.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Andrew Mulford
Employee Member


Rob Miller
Carrier Member

Dated: 10/19/16
Arlington Heights, Illinois