NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7529
CASE NO. 37, AWARD NO. 37

Brotherhood of Maintenance of Way
Employes Division – IBT Rail Conference

v.

CSX Transportation Inc.

Patrick Halter, Neutral Member
Robert Paszta, Carrier Member
Andrew Mulford, Organization Member

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's dismissal of employe M. Tolin for the alleged violation of CSXT Operating Rules – General Rule A; General Regulations GR-2, GR-15 and CSX Ethics Policy for allegedly claiming and receiving compensation for extra Safety Bonus Time (SBT) and falsification of payroll was on the basis of unproven charges, arbitrary, capricious and in violation of the Agreement (System File D70162613/2013-1444949).

2. As a consequence of violation(s) referred to in Part 1 above, Claimant M. Tolin shall receive the remedy prescribed in Rule 25, Section 4 of the Agreement."

FINDINGS:

Public Law Board No. 7529 finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over this dispute.

Claimant entered on duty with Carrier on October 15, 2007, and maintains seniority in several classifications in the Maintenance of Way Department such as Track Inspector, Machine Operator and Foreman. During calendar year 2013, Claimant was authorized two (2) Safety Bonus Days which are days off from work with pay. Claimant was not at work on January 2, 3 and 31, 2013, and February 26, 2013; he reported those four (4) dates as Safety Bonus Days and received forty (40) hours of compensation.

In early March 2013 Claimant was designated as Foreman for a team of six (6) employees assigned to the Jacksonville Service Lane Work Territory. The team may be assigned to work in any locale within the service lane territory; each member receives a fixed dollar allowance for

time in transit from the member's residence to the assigned work site. On Sunday, March 3, Claimant and his team received instructions to report for duty on Monday, March 4, to Valdosta (GA) for their regularly scheduled ten (10) workday beginning at 7:00 a.m. For the days that Claimant and his team were working in and around the Valdosta area (March 4, 5 and 6), Claimant submitted records to payroll that included overtime for himself and his team showing 2 hours overtime on Monday, March 4, forty-five (45) minutes overtime on Tuesday, March 5 and thirty (30) minutes overtime on Wednesday, March 6.

On March 28, 2013, the Carrier instructed Claimant to attend a formal investigation to determine his responsibility, if any, "in connection with information ... that you claimed and were compensated for a total of [40] hours Safety Bonus Time (SBT) on January 2, 3, and 31, 2013 and February 26, 2013 ... even though you had reasonable knowledge that you were only entitled to a maximum of two (2) Safety Bonus Days."

Aside from Safety Bonus Days, the investigation concerned an allegation that Claimant "falsified payroll between March 4 and 6, 2013 by claiming overtime compensation for time not worked." The Carrier charged Claimant with "conduct unbecoming an employee of CSX Transportation, falsifying payroll, dishonesty, theft, making false reports, failure to properly perform the responsibilities of your position, and possible violations of, but not limited to, CSXT Operating Rules – General Rule A; General Regulations GR-2 and GR-15; as well as, the CSX Code of Ethics."

Based on testimony and evidence obtained during the investigative hearing conducted on April 17, 2013, the Carrier determined that Claimant "violated General Operating Rules – General Rule A; General Regulations GR-2 and GR-15; as well as, the CSX Code of Ethics." In rendering its decision, the Carrier's letter of dismissal, dated May 7, 2013, states in part as follows:

> A thorough review of the transcript and exhibits demonstrates that during the hearing you and your representative were allowed to cross-examine all Carrier witnesses and present any witnesses, documents and testimony on your behalf, in accordance with your contractual due process rights. Additionally, all objections were handled appropriately, thus protecting your due process rights in accordance with your collective bargaining agreement.

By letter dated May 21, 2013, the Organization notified the Carrier of Claimant's request seeking expedited adjudication with this Board.

CARRIER'S POSITION:

Claimant received a fair and impartial hearing that established he violated General Rule A (know and obey rules), General Regulation GR-2 (forbids dishonesty, disloyalty and false statements), General Regulation GR-15 (prohibits claiming time and wages that are not actually worked) and the CSX Code of Ethics (requires accuracy and truthfulness and forbids theft, fraud and misrepresentation on a timesheet).

Consistent with Rule 25 and Side Letter 22, the investigatory hearing was held within thirty (30) days "from the date management had knowledge of the employee's involvement." Claimant used 40 hours for Safety Bonus Days on January 2, 3 and 31, 2013 and February 26, 2013, as shown on payroll records for those dates. These dates in payroll records occurred more than 30 days prior to the hearing date; however, the Carrier became knowledgeable about Claimant's misconduct on March 11, 2013, and set a hearing for April 10, 2013. Thus, the hearing date was set within 30 days "from the date management had knowledge of [Claimant's] involvement." Even though the Safety Bonus Days had been processed through payroll and approved for payment, the Carrier is not precluded from initiating corrective action when a subsequent review or audit reveals misconduct in connection with that payroll.

Prior to issuing a notice of charges (March 28, 2013) and setting the hearing (April 10, 2013), the Carrier states that it initiated an investigation into Claimant's Safety Bonus Days and claims for overtime on March 4, 5 and 6. As part of that investigation, the Roadmaster requested statements from Claimant's team members. The Carrier asserts that Rule 25, Section 1(c) does not require the Carrier to (1) afford team members an opportunity to consult with a union representative prior to submitting a written statement and (2) provide the team members and union representative with copies of the written statements - - BMWE's argument - - given on-property Award 14 (Public Law Board 7529). [Carrier Exh. B]

Specifically, the Carrier refers to the neutral's conclusions in Award 14 that Section 1(c) does not "require [the] Carrier [to] provide the Organization [with] copies of all statements and exhibits it intends to introduce at the hearing" and "Rule 25 only requires [the] Carrier [to] provide Claimant copies of any written statements [Claimant] made." See also Public Law Board 7120 (Awards 9, 73) and Public Law Board 7529 (Award 5). [Carrier Exhs. C, D, E] In rebuttal to an assertion lodged by BMWE, the Carrier states that it did not coerce team members to provide written statements.

With respect to that part of the charge concerning Safety Bonus Days, there is no dispute that Claimant consumed four (4) Safety Bonus Days in calendar year 2013. During Safety Conference Calls in which Claimant participated, the Carrier advised employees they had 2 Safety Bonus Days. Claimant can readily access his payroll record to ascertain the authorized number of Safety Bonus Days. Claimant has no defense to rebut the charge that he consumed 2 Safety Bonus Days beyond the number authorized which equates to Claimant receiving twenty (20) hours of compensation in violation of the rules and Code of Ethics.

Aside from Safety Bonus Days, there is the other part of the charge involving Claimant's submission to payroll for overtime on March 4, 5 and 6, 2013. There is no dispute that Claimant submitted 2 hours overtime for March 4. In this regard, Claimant and five (5) team members received a flat allowance - - no overtime - - for their time in transit to Valdosta. The sixth (6^{th}) member of the team was authorized overtime because he was driving the CSX vehicle from Jacksonville to Valdosta. Team members confirmed they did not work 2 hours overtime on March 4. Claimant's submission to payroll with 2 hours overtime for himself and each member violates Rule A, GR-2 and GR-15 and the Code of Ethics.

On March 5 Claimant submitted 45 minutes of overtime and on March 6 he submitted 30 minutes of overtime. The Carrier disputes the Claimant's assertions that overtime was appropriate because the team worked through lunch and was required to leave the hotel early (prior to 7:00 a.m.) for work. As required by the Agreement, the Carrier provided the team with a lunch period and Claimant, specifically, was directed not to leave the hotel prior to 7:00 a.m. Furthermore, a basic force team working alongside Claimant's team did not work through lunch and did not claim overtime on March 5 and 6. Claimant's argument that the supervisor approved payroll so culpability resides with that official is not persuasive because Claimant prepared the submission to payroll.

Theft and dishonesty constitute a major offense and, in the circumstances of this claim, justify Claimant's dismissal. This is Claimant's second major offense within a six (6) month period. He is a relatively short-term employee with a record of rules violations. The claim should be denied.

ORGANIZATION'S POSITION:

BMWE argues that the Carrier denied Claimant "due process" by violating Rule 25. Therefore the investigation is flawed and Claimant's dismissal must be rescinded. Aside from due process violations, the Carrier failed to establish a sufficient level of evidence to sustain the charge levied against Claimant.

Under Rule 25, Claimant is entitled to a fair and impartial hearing but the hearing officer's repeated interruptions to BMWE's line of inquiries fouled the hearing to such an extent that Claimant's dismissal must be set aside. Also, Rule 25 states that a hearing can be postponed only for a "valid reason" yet the Carrier postponed the hearing without any reason and without advance notice to the Organization or its consent. This unilateral postponement also supports setting aside Claimant's dismissal.

Another violation of Rule 25 occurred when the Carrier did not charge and investigate Claimant within 30 days of management's knowledge of the alleged misconduct. Claimant consumed Safety Bonus Days on January 2, 3 and 31 and February 26, 2013, but Claimant was not charged until March 28, 2013, which is a date exceeding the 30-day window authorized under Rule 25.

In regards to Section 1(c) in Rule 25, the Carrier directed each member of the team to provide a written statement addressing Claimant's conduct as it pertains to overtime for March 4, 5 and 6, 2013. In violation of Section 1(c) the Carrier knowingly failed to inform each member of his opportunity to seek assistance from a union representative, failed to provide each member with a copy of his signed statement and failed to provide the employee's union representative with a copy of the employee's signed statement.

Aside from these "due process" violations subjecting Claimant to an unjust dismissal, the nature of the charge levied against the Claimant (dishonesty and falsification) requires the Carrier to establish the alleged misconduct with an elevated or more stringent burden of proof. The Carrier fails to meet its burden of proof because Claimant reasonably believed he was entitled

to 4 Safety Bonus Days in January and February 2013. As for overtime, Claimant and team members were directed on Sunday (March 3) to report to Valdosta for work beginning at 7:00 a.m. on Monday (March 4). Travel time from Jacksonville to Valdosta is approximately sixty (60) to ninety (90) minutes. Since Monday was a workday, Claimant believed overtime was warranted to cover the time in transit.

Claimant also believed overtime was appropriate under the Agreement when the team worked through lunch on Tuesday (March 5). Although Claimant acknowledges he may have incorrectly coded the "missed" lunch that the team worked through, the coding error is not material because the correct code and his incorrect code yield the same value amount in payment. At most Claimant acted under an errant interpretation of the Agreement without intent to defraud or engage in dishonesty. According to the Organization, Claimant has been treated disparately compared to his supervisor and team members as they were responsible for reviewing their time sheets prior to Claimant submitting it to payroll but they have not been charged or subjected to any discipline.

Numerous awards of this Board show that the Carrier acts capriciously and improperly when it issues an unwarranted dismissal in violation of the Agreement. (Awards 2, 5, 7, 13, 16) Since the Carrier's dismissal of Claimant violates the Agreement, the claim must be sustained.

CONCLUSIONS:

At the outset the Board will address the Organization's argument that the Carrier denied Claimant "due process" with the alleged violations of Rule 25. BMWE states that the violations, standing alone, warrant setting aside Claimant's dismissal.

A hearing officer is accorded wide latitude in the conduct of an investigatory hearing. A review of the transcript confirms that the hearing officer interrupted questioning of witnesses but such interruptions, in the Board's view, demonstrated an effort to move the hearing forward by addressing the charge and rules violations in an orderly manner. Efforts by the hearing officer to minimize Claimant's interruptions to questions by the Organization's representative as well as Claimant's interrupting testimony by Carrier witnesses were appropriate if not necessary. All witnesses testified on direct and were subjected to cross-examination and all evidence offered by Claimant and the Organization is in the record. The hearing officer's conduct of the hearing did not interfere with Claimant's right to a fair and impartial hearing.

Also not interfering with Claimant's right to a fair and impartial hearing was the Carrier's postponement of the hearing which was initially set for April 10 but was rescheduled to April 18 which was followed by the Carrier's and the Organization's agreement to convene the hearing on April 17. There is no indication that the postponed and rescheduled hearing resulted in lost or spoiled evidence or rendered unavailable any witnesses for Claimant.

Consistent with Rule 25 and Side Letter 22, the investigatory hearing was held within 30 days "from the date management had knowledge of the employee's [Claimant's] involvement." During the Carrier's inquiry on March 11, 2013, into Claimant's overtime, officials became aware that Claimant received time away from work with pay for 2 unauthorized Safety Bonus Days. The initial hearing date (April 10) is within the 30-day period "from the date management had knowledge of [Claimant's] involvement" which was March 11. The threshold date for initiating the 30 days commenced with the Carrier's knowledge of the alleged misconduct (March 11) and not on any of the dates that Claimant used Safety Bonus Days (January 2, 3 and 31 and February 26) or on the payroll reporting dates.

As for Rule 25, Section 1(c), it states the following:

> Section 1 - Hearings
>
> (c) An employee who is required to attend an investigation and or make a statement prior to a hearing in connection with any matter which may eventuate in the application of discipline to any employee shall be offered the opportunity to contact his accredited union representative before a statement is reduced in writing. A copy of his statement, if reduced in writing and signed by him, shall be furnished him and his union representative.

According to the Organization, the Carrier violated Section 1(c) because it failed to offer each team member "the opportunity to contact his ... union representative before a statement" was "reduced in writing" and did not "furnish [the team member] and his union representative" with a copy of the team member's written statement.

The Carrier cites Award 14 and others. [Carrier Exhs. B, C, D, E] In on-property Award 14, "the Organization requested all exhibits, documents, and any other items the Carrier planned to introduce at the investigation, including any documents signed by Claimant or other witnesses." The Carrier denied the request; the Organization alleged that the Carrier's response "violated its obligation to provide Claimant with a fair and impartial hearing."

The Carrier states that Award 14 shows that Rule 25 does not require it to provide a copy of <u>all</u> written statements and exhibits that the Carrier intends to submit at hearing when requested by the Organization prior to hearing. The Carrier states that Rule 25 requires the Carrier to provide only the Claimant with a copy of his written statement(s).

Arbitral precedent in this record indicates that Section 1(c) has been interpreted and applied to require the Carrier to provide the Claimant with a copy of his written statement. Aside from the Claimant's statement, the Carrier is not required to provide copies of other statements that may be offered at hearing to the Organization. Pre-dating this arbitral precedent set forth in Award 14 (Public Law Board 7529) is Award 73 issued by Public Law Board 7120 where "it was found that the failure of the Carrier to provide the materials requested prior to hearing was not a due process violation requiring reversal of the discipline imposed." The same conclusions are

present in other awards issued by Public Law Board 7120 (Awards 3 and 27) as well as Awards 16 and 25 by Public Law Board 7008.

Throughout the span of time covered by these six (6) awards rendered by three (3) different boards (August 25, 2008 – February 28, 2013), the wording in Section 1(c) remains unchanged. Hence the inclusion in Section 1(c) of the indefinite article "an" and the generic word "any" may, on the surface, appear to encompass a diversity of meaning encompassing an indefinite number or division of employees subject to the section's scope; however, the meaning of "an" and "any" is dependent on the context in a particular collective bargaining agreement. When those words in the parties' collective bargaining agreement are assessed in the context of arbitral precedent, their interpretation and application have been defined as restricted to a claimant.

Based on this arbitral precedent and its application to the circumstances presented in this claim, the Board concludes that the Carrier did not violate Section 1(c) in Rule 25 when it did not provide the team members with copies of their written statements and did not provide copies to the Organization. Since Section 1(c) applies to Claimant, there was no violation of the clause addressing an opportunity to confer with a union representative in the preparation of a written statement. In sum, the Claimant was not denied a fair and impartial hearing.

Having determined that the Claimant received a fair and impartial hearing as required by Rule 25, the Board proceeds to review the evidence in the record related to the charged misconduct. The Board concludes there is sufficient probative evidence to sustain the charged misconduct levied against the Claimant. Claimant knew from his participation in Safety Conference Calls that he was entitled to use a total of 2 Safety Bonus Days in calendar year 2013. Notwithstanding his knowledge of 2 authorized Safety Bonus Days, Claimant reported a total of 4 Safety Bonus Days. The 2 extra days resulted in his receiving 20 hours of time off from work with compensation that was not authorized.

As for overtime on March 4, 5 and 6, the evidence shows that Claimant reported overtime on those dates. Even if Claimant reasonably believed overtime was appropriate for working through lunch on March 5, there remains his reporting overtime on March 4 when he received a fixed allowance for travel time and his reporting overtime on March 6 when he had been advised there was no early exit from the hotel prior to the scheduled 7:00 a.m. departure.

Theft encompasses knowingly receiving compensation for time away from work that was not authorized as well as claiming and receiving compensation for time not worked. By engaging in the charged misconduct, the Claimant violated General Rule A (know and obey rules), GR-2 (dishonesty), GR-15 (claiming time with pay without authorization) and the Code of Ethics (accuracy and truthfulness on time sheet and no misrepresentation, fraud or theft).

Claimant has approximately 6 years' service with the Carrier. The record shows that since November 2010, he has amassed seven (7) rules violations including a prior matter with discipline for dishonesty and theft in reporting his time. This situation of Safety Bonus Days and

overtime is rules violation number eight (8) and Claimant's second major offense within the past 6 months. Given Claimant's employment record, progressive discipline has not resulted in corrected behavior that demonstrates Claimant conforming to expectations and requirements in the workplace. In this claim the Board finds no basis for exercising its authority to modify the penalty imposed because the charge is proven and there is no violation of the Agreement. Consequently, the claim is denied.

AWARD
Claim denied.

Patrick Halter /s/
Patrick Halter

Signed on this 18th day
of December, 2013

LABOR MEMBER'S DISSENT
TO
AWARD 37 OF PUBLIC LAW BOARD NO. 7529
(Referee Halter)

Award 37 of PLB No. 7529 is palpably erroneous and, therefore, dissent is required. In this case, the Majority has reached a decision so clearly contradictory to the contractual language that the parties agreed to as to exceed the jurisdiction of the Board. In addition, in its rush to deny the claim, the Majority disregarded applicable on-property precedent awards. Since such action is not authorized, contemplated or allowed under the PLB Agreement, the Collective Bargaining Agreement or Railway Labor Act, the award is palpably erroneous and cannot serve as precedent in any future case.

To appreciate the magnitude of the Majority's error, we would first refer to Rule 25(c), which reads:

"RULE 25 - DISCIPLINE, HEARINGS, AND APPEALS

* * *

(c) An employee who is required to attend an investigation and or make a statement prior to a hearing in connection with any matter which may eventuate in the application of discipline to any employee shall be offered the opportunity to contact his accredited union representative before a statement is reduced in writing. A copy of his statement, if reduced in writing and signed by him, shall be furnished him and his union representative."

The above-quoted text is undeniably straightforward and unambiguously relates the intent of the parties. The rule provides clear cut contractual due process protection under which employes whom are required to submit a written statement that may be used to discipline any employe are entitled to: (1) the offer/chance to meet their union representative first; and (2) have any such statement provided to them and their union representative.

The text and substance of Rule 25(c) has previously been reviewed in Award 29 of PLB No. 7104, which upheld the clear and unambiguous contractual requirements as follows:

"As written, the use of the work 'shall' in subparagraph (c) imposes mandatory procedural due process requirements upon the Carrier in two separate respects: First, a Carrier official who requires a written statement from an employee must affirmatively inform the employee of the right to obtain union representation before the employee submits a written statement. Second, the Carrier official must immediately provide the employee and the union representative with a copy of the written statement upon its completion."

In the instant case, there is no question that the Carrier: (1) failed to offer employes the opportunity to speak with a union representative prior to writing their statement; and (2) did not offer said written statements to the employes or their union representative. The Carrier failed to do so even though they ultimately relied on these statements to apply discipline to Claimant. Moreover, the record also confirms that these employes were threatened and told that they would be disciplined if they did not comply with instructions to make a written statement. In this regard, we direct specific attention to Page 23 of the formal transcript, Roadmaster Brock stated:

"Tolin:	Alright Mr. Brock again this is Mr. Tolin, is it your duty as a roadmaster to abide by the CSX collective bargaining agreement with union employees?
Brock:	It is sir.
Tolin:	Thank you.
Trawick:	Mr. Brock this is again Nat (sic) Trawick for the organization. Mr. Brock at any time did you advise Mr. Parker, Lindsey, Stevens and Speed of their right to contact union representation?
Brock:	Could you repeat the question please?
Trawick:	At any time did you advise Mr. Parker, Mr. Lindsey, Mr. Speed and Mr. Hewett that they had the right to contact their union representation?
Brock:	No, nor did they ask for representation.
Trawick:	Okay, Mr. Brock also did you provide them with a copy of the statement that you...
Brock:	No sir, nor did they ask for a copy.
Tolin:	Mr. Brock this is Mr. Tolin again, did any time was it asked what would happen if they did not write a statement?
Brock:	To some degree, yes.

"Tolin: And what, what was that?

Brock: Did they...if they did not write a statement that they would be charged."

The aforementioned threatening and inappropriate conduct on the part of the Carrier is exactly what the parties intended Rule 25(c) to prevent! The Majority grievously erred when it effectively sanctioned such conduct.

In this case the Carrier did not "furnish" each team member "and his union representative" with a copy of the team members' written statements. Also, the Carrier did not offer each team member the "opportunity to contact" a union representative "... before a statement is reduced in writing. ***" By not offering each team member an opportunity to contact his union representative and not furnishing a copy of the written statement to each team member and that member's union representative, the Carrier breached Section 1(c).

In light of that unquestionable violation, it is clear that our claim should have been sustained, a fact explained by on-property Award 29 of PLB No. 7104, which stated that:

> "Where, as here, the parties have agreed upon explicit and mandatory procedural due process obligations in their Agreement, perfection and preservation of the right to impose discipline requires compliance with the obligations. When those obligations are not fulfilled, the Carrier effectively waives and/or forfeits its ability to impose discipline.
>
> Given the foregoing discussion, we must sustain the claim."

So there we have it, the Carrier openly admitted to blatant violations of Rule 25(c), and yet, the Board did not find a violation had occurred, let alone did it sustain our claim as presented. At this point, the reader might be asking themselves what happened; especially since Rule 25 is so clear and the Carrier's conduct undisputed. More so, the reader might be scratching their head over the outcome in light of the aforementioned awards which clearly explain why the claim should have been sustained as presented. It is the answer to that question which illustrates the extent of the Majority's error. Rather than abiding by the clear language of Rule 25(c), or, if the Board had some reservations on the clarity of the rule, following the explanation contained in Awards 29 and 30 of PLB No. 7104, the Board instead erroneously relied on inapplicable awards to rewrite Rule 25(c).

In this regard, the majority cited Award 73 of PLB No. 7120, Award 14 of PLB No. 7529, Awards 3 and 27 of PLB No. 7120 and Awards 16 and 25 of PLB No. 7008 as the foundation for its decision.

However, a thorough review of those awards reveals that literally none of them support the Board's decision. The following is a brief summary of each of those awards, though the reader is urged to review each award for themselves:

1. Award 16 of PLB No. 7008 - The Board rejected the Organization's claim that the Carrier had failed to properly provide pre-investigation discovery. In making this determination, the Board found that the Organization's request under Rule 24(i) to review management records does not require the Carrier to provide summaries of testimony or investigative records prior to the hearing. The Board made no determination or examination as to what was required under Rule 25(c).

2. Award 25 of PLB No. 7008 - The Board rejected a similar position taken by the Organization under Rule 24(i) of the Agreement. The Board ultimately ruled against the Organization finding that Rule 24(i) did not afford the requested relief. The Board made no mention of Rule 25(c) nor was the claim advanced under that rule.

3. Award 3 of PLB No. 7120 - Yet another case involving an Organization claim about pre-investigation discovery raised under Rule 24(i) of the Agreement. The Board ultimately ruled against the Organization finding that Rule 24(i) did not afford the requested relief. The Board made no mention of Rule 25(c) nor was the claim advanced under that rule.

4. Award 27 of PLB No. 7120 - Yet again, another case involving an Organization claim about pre-investigation discovery. Such claim was raised under Rule 24(i) of the Agreement. The Board ultimately ruled against the Organization finding that Rule 24(i) did not afford the requested relief. The Board made no mention of Rule 25(c) nor was the claim advanced under that rule.

5. Award 73 of PLB No. 7120 - Yet still a further case involving an Organization claim about pre-investigation discovery. Such claim was raised under Rule 24(i) of the Agreement. The Board ultimately ruled against the Organization finding that Rule 24(i) did not afford the requested relief. The Board made no mention of Rule 25(c) nor was the claim advanced under that rule.

6. Award 14 of PLB No. 7529 - Is the only decision cited by the Board which actually reviewed Rule 25(c) and made a determination. However, a review of this award reveals that in making its determination, PLB No. 7529 actually found that employes are entitled to the opportunity to talk to their union representative before making a statement and that the Carrier is obligated to provide copies of written statements of those to the employes.

As should be clear from the foregoing, the awards offered by the Majority as support for its decision simply do not offer any support for its palpably erroneous decision but, in fact, support the Organization's position. As such, not only does the Majority's decision depart from the clear language of the rule to be palpably erroneous, but the awards upon which it staked its decision neither support or agree with rewriting Rule 25(c).

In an effort to avoid confusion, Rule 24(i) is now offered for review in the hopes that any future reader may compare it to Rule 25(c):

"RULE 24 - CLAIMS AND GRIEVANCES

* * *

(i) It is understood the duly accredited Organization representative, upon request, will be permitted to review relevant management records for the purposes of researching issues related to enforcing the collective bargaining agreement. The following includes claims, appeals, hearing/investigation records, statements, and safety records."

As cited above, Rule 24(i) falls within the section of the Agreement dealing with the handling of claims and grievances and with the Organization's right to review Carrier records in connection therewith. It is clearly a separate and distinct right from Rule 25(c). Moreover, whereas it deals with handling and progressing disputes on the property after a violation of the Agreement has occurred, Rule 25(c) deals with protections and safeguards which are provided to every employe by virtue of their seniority. Such safeguards are to protect employes at all times.

In closing, we are confident that any future reader will undertake a careful examination of Rules 24 and 25 and will recognize that Rule 24 deals with handling claims and grievances after a violation of the contract has occurred. Rule 24(i) provides for review of Carrier documents so that the Organization can enforce the Agreement. In contract, Rule 25 deals with protecting employes during the discipline process. In crafting Rule 25, the parties used very specific language to set forth the rights of employes and the obligations of the Railroad. And yet, the Majority in the instant decision failed to give force and effect to the terms that the parties agreed to and instead substituted terms and logic arising out of an entirely different rule. On the basis of this outrageous over-reach and rewriting of the Agreement, the award is palpably erroneous and cannot stand as precedent in any future case.

For all the reasons set forth above, I must respectfully dissent.

Respectfully submitted,

Dennis R. Albers

Dennis R. Albers
Employe Member