

- PUBLIC LAW BOARD NO. 7874

BROTHERHOOD OF MAINTENANCE OF)		
WAY EMPLOYES DIVISION--IBT)		CASE NO. 1
RAIL CONFERENCE)		AWARD NO. 1
)	
and)		
)	
FLORIDA EAST COAST RAILWAY)		

Public Law Board No. 7874, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline [seven (7) day actual suspension and one (1) year probationary period] of Mr. J. Hall, Jr. for allegedly failing to follow directives on May 16 and 22, 2017 was on the basis of unproven charges, arbitrary and in violation of the Agreement (System File E94903217 FEC).
2. As a consequence of the violation referred in Part 1 above, Claimant J. Hall, Jr. shall have the seven (7) day actual suspension stricken from his record, paid for all lost time and the probationary period removed from his record.”

Claimant, Joel Hall, Jr., has been employed by the Carrier since 2001. At the time of the instant dispute, he was working as a welder. By letter dated June 6, 2017, the Carrier directed Claimant to report for a formal investigation, on June 12, 2017, into allegations that on May 16, 2017, and again on May 22, 2017, he failed to follow directives to take a company vehicle in for repairs. In a separate letter also dated June 6, 2017, the Carrier postponed the investigation until June 19, 2017.

Following the investigation, by letter dated June 28, 2017, the Carrier informed Claimant that the investigation had proven he was guilty of failing to comply with instructions on both May 16 and May 22, 2017. The Carrier assessed him a seven-day actual suspension and one year of probation.

The Organization challenges the discipline assessed against Claimant on procedural and substantive grounds. First, it asserts that the Carrier failed to comply with the procedural protections of Rule 12, Discipline, of the parties' Agreement. On the merits, the Organization argues that the Carrier failed to meet its burden of proving Claimant's guilt by substantial evidence and, even if it had, the level of discipline imposed represented an arbitrary and unwarranted exercise of the Carrier's discretion to determine penalties.

Rule 12 provides, in relevant part:

(d) Notice of such hearing, stating the charge or charges, will be given to the employee, in writing, at least five (5) days prior to such hearing. . .

(g) The hearing shall be held within twenty-one (21) days, **if circumstances permit**, from the time the Company had knowledge of the offense under investigation . . . (emphasis added).

(h) If the hearing is not held within the specified time, no action will be taken by the Company on the charge and no notation shall be entered on the employee's record.

The Organization primarily asserts that the Carrier failed to convene the formal investigation within the 21-day time limit set forth in Rule 12(g). It states that the directive is mandatory, and the record in the instant case shows only that the Carrier unilaterally postponed the hearing by letter dated June 6, 2017.

The Organization asserts that the record is clear the Carrier was aware of the alleged violations more than 21 days before the June 19, 2017 hearing date. At the investigation, Claimant's supervisor, T.J. Dickerson, testified that he gave Claimant the instructions at issue on May 16, 2017 and on May 22, 2017, but was not aware until May 18, 2017 that he had not followed the first directive, and was not aware until May 25 or 26, 2017 that Claimant had not followed the second. Even accepting the Carrier's position as to first notice, it is clear, the Organization states, that the Carrier failed to conduct the hearing until more than 21 days after both first-notice dates. The Organization states that this is a clear contract violation, and, according to the equally clear language of Rule 12(h), the discipline must be nullified and the claim sustained.

The Carrier points to the fact that Rule 12(g) states that the hearing shall be held within 21 days of knowledge of the relevant time, if circumstances permit. The

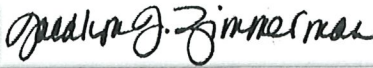
Carrier argues that this language allows permits the Carrier to schedule hearings more than 21 days after knowledge of the relevant incident, at its discretion.

We have carefully reviewed the record in this matter. The record is clear that the investigation was not held within 21 days of the Carrier's knowledge of either relevant event. The Carrier contends that the "if circumstances permit" language in Rule 12(g) gave it full discretion to hold the hearing more than 21 days after first knowledge. However, this record includes no evidence of any circumstances that would have prevented the Carrier from conducting the hearing within 21 days. Indeed, there is nothing to show that the Carrier ever asserted that it could not conduct the hearing within that period. To accept the Carrier's contention that the relevant language gave it full discretion to postpone the hearing at will would be to write the 21-day time limit out of the contract. This cannot be the parties' intent.

We therefore conclude that the Carrier violated Rule 12(g) of the parties' Agreement by failing to hold a timely hearing on the allegations against Claimant. Therefore, pursuant to Rule 12(h), we sustain the claim without reaching the merits and order that the discipline against Claimant be overturned, that any mention of this discipline be removed from his record, and that he be made whole for his losses.

AWARD

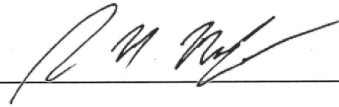
Claim sustained.

A rectangular box containing a handwritten signature in black ink, which appears to read "Jacalyn J. Zimmerman".

JACALYN J. ZIMMERMAN
Neutral Member

A handwritten signature in blue ink, which appears to read "Tom Ballas".

TOM BALLAS
Carrier Member

A handwritten signature in black ink, which appears to read "Andrew Mulford".

ANDREW MULFORD
Organization Member

Dated this 14th day of March, 2019.