

SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NOS. 133
CASE NO. 133

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISIONS: Claim denied

DATE: May 14, 2000

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The dismissal of employe F. A. Davis in connection with charges of his alleged dishonesty and theft of services on March 14, 15 and 18, 1999 was arbitrary, excessive and in violation of the Agreement (System File CRA-MW-99-26).
2. As a consequence of the violation referred to in Part (1) above, Claimant F. A. Davis shall "... be allowed to return when he has completed his treatment and the carrier assistant counselor has had a opportunity to review his recovery."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was injured off the job in September of 1998. He was hospitalized and remained off work thereafter. It is undisputed that on three occasions in March of 1999 Claimant improperly represented himself as being an active employee to secure Carrier-paid taxi transportation between Pittsburgh and Erie, Pennsylvania for personal reasons. According to the

testimony of a Carrier official, Claimant did so after being informed he was not entitled to such transportation.

Although Claimant was provided due notice of the investigation hearing scheduled for 9:00 a.m. on May 5, 1999, he did not attend. After waiting some 35 minutes with no word of his whereabouts, the hearing officer denied the Organization's request for a postponement and conducted the hearing without Claimant's presence. Carrier issued a dismissal notice on May 24, 1999. Due to clerical error, a copy of the transcript was not provided to the Organization until June 24, 1999. Thereafter, the Claim was handled on the property in the customary manner.

Claimant admitted his culpability in letters of apology dated May 17 and September 30, 1999. The May 17th letter enclosed two postal money orders to make restitution for two of the three transportation charges. Claimant also revealed problems with chemical abuse during the relevant timeframe as well as his entry into and successful completion of a treatment program while the Claim was being handled on the property.

The Organization challenges the discipline on two procedural grounds as well as for Carrier's alleged failure to properly consider the mitigating circumstances of chemical abuse and successful treatment. The procedural objections arise from the hearing *in absentia* and for the late provision of a copy of the transcript. After careful review, we find that both lack merit.

Claimant had due notice of the hearing and the charges. It was his responsibility to ensure he was present. According to the applicable rule, postponements may be requested for valid reasons. No valid reason for Claimant's absence was provided to the hearing officer in connection with the Organization's request for a postponement.

Moreover, the circumstances surrounding Claimant's excuse for missing the hearing raise serious questions about its legitimacy. The asserted car breakdown occurred between Pittsburgh and Erie, some 70-80 miles north of the hearing location. Claimant's call for a tow was placed one hour after the scheduled start of the hearing. Claimant did not place a call to the hearing to inform of his situation because he said he did not know where the hearing was to be held. He did not have with him the papers containing that information. These circumstances strongly suggest Claimant had no intention of attending the hearing.

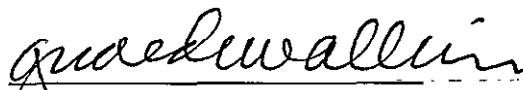
Regarding the provision of a hearing transcript, we note that the applicable rule does not impose a time limit for providing a transcript. Therefore, there was no procedural rule violation.

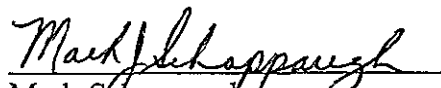
In addition, our examination of the record of handling on the property reveals no prejudice resulting from the short delay in receiving the transcript. Finally, Claimant admitted the factual circumstances of his misconduct. His apology letter concedes there was no justification for his actions.

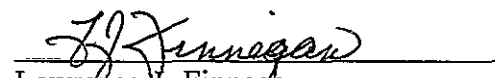
It is well settled that dismissal is a proper disciplinary action for theft related misconduct. It was for the Carrier, therefore, to determine whether it should impose a lesser form of discipline in view of the claimed mitigating circumstances. We do not find Carrier to have acted unreasonably in rejecting the mitigating contentions of Claimant and the Organization.

AWARD:

Claim denied.


Gerald E. Wallin, Chairman
and Neutral Member


Mark Schappaugh,
Organization Member


Lawrence J. Finnegan,
Carrier Member
6/7/00