

SPECIAL BOARD OF ADJUSTMENT NO. 173

Award No. 23
Case No. 27

PARTIES TO DISPUTE: Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employees

Union Pacific Railroad Company

STATEMENT OF CLAIM: "(1) The Carrier violated the Rules of the Agreement when it suspended Clerk Harry G. Wheeler from service on January 3, 1957, and on January 21, 1957, assessed his personal record with thirty (30) demerits, and on January 24, 1957, wrote the claimant in part: 'You are being returned to service on a leniency basis with no claim for pay for time lost.'

(2) That Carrier shall now compensate Clerk Wheeler for all monetary loss suffered from January 3rd, 1957, until he was returned to service January 29, 1957, and his personal record cleared of the thirty (30) demerits."

FINDINGS: The Board, upon the whole record and all the evidence, finds that:

The Carrier or Carriers and the Employee or Employees involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

The Board has jurisdiction over the dispute involved herein. The parties to said dispute were given due notice of hearing thereon.

The record of investigation does not, by clear and convincing evidence, uphold the contention that claimant was granted permission by his immediate supervisor to absent himself from duty on December 26th to the 28th, 1956, inclusive. Since claimant failed to maintain a valid defense, he was guilty of violating Rule 702 and properly subject to discipline therefor.

Suspension, prior to hearing, is expressly countenanced by Rule 45. It was not an abuse of discretion for Carrier to have utilized such procedure in this instance.

Implicit in Carrier's letter of January 21, 1957, is the understanding that the lost time theretofore incurred, plus the additional entry of thirty demerits against claimant's personal record, would constitute the total penalty to be assessed. This measure of discipline was not excessive punishment for this particular misdeed.

However, there is no justification for Carrier waiting until January 24, 1957, to advise claimant of his reinstatement to service on a leniency basis. It follows that claimant is entitled to be reimbursed for any loss of earnings he may have suffered during the period between January 22, 1957 and January 24, 1957, both inclusive.

AWARD: (1) That in accordance with the above findings, the suspension of Harry G. Wheeler from service on January 3, 1957, and the subsequent entry of thirty demerits on his personal record and reinstatement on a leniency basis was not a violation of the Clerks' Agreement.

(2) That the Carrier forthwith shall remunerate Harry G. Wheeler for all straight time hours of work lost by him as a result of his suspension from service during the period from January 22, 1957 to January 24, 1957, both inclusive.

SPECIAL BOARD OF ADJUSTMENT NC. 173

/s/ Harold M. Gilden
Chairman

/s/ A. J. VanDercreek
Carrier Member

/s/ Stanley B. Eoff
Organization Member

Salt Lake City, Utah
June 20, 1958