

SPECIAL BOARD OF ADJUSTMENT #280

Award No. 148
Case No. 232

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE St. Louis Southwestern Railway Company

STATEMENT
OF CLAIM

- "1. Carrier violated the effective Agreement when Mr. H.L. Traylor was unjustly dismissed on April 23, 1979, without a fair and impartial hearing.
2. Claimant H.L. Traylor shall be paid for all time lost, shall be reinstated to his former as Foreman with seniority, vacation and all other rights unimpaired and this charge be stricken from his record."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, a Foreman, was dismissed on April 23, 1979, following an investigation. The record indicates that he was reinstated on a leniency basis the following November. The incident upon which the entire dispute is based took place on March 19, 1979.

Petitioner's principal position is that Claimant was not afforded a fair and impartial hearing and was not aware of the specific charges upon which he was tried. Further, it is implied that Claimant was not guilty of the charges. As part of its argument, the Organization alleges, that Claimant was entitled to a hearing subsequent to his dismissal in addition to the hearing initially held.

The Carrier argues that there were no procedural flaws in this proceeding. Carrier points out that Claimant was asked at the inception of the investigation as to

whether he was ready to proceed and he indicated that he was ready to proceed. He was not precluded from introducing any evidence which he desired in the course of the investigation. Carrier argues that it has the unrestricted right to assess discipline both prior to and after an investigation. In the instant case Carrier chose to investigate the matter before assessing discipline which has been its practice for many years.

With respect to the merits Carrier asserts that Rule 202B states in pertinent part as follows:

"Shunt wires must not be removed until machines have been removed from the track or until track has been made safe for the passage of train."

Carrier indicates that as a result of Claimant's removing the shunt wires from the track while the mobile crane, which his crew was working with, was still occupying the main track resulted in a serious collision between that crane and an engine. Severe damage to the crane was the result of the accident as well as damage to the engine. Carrier argues that the evidence is clear and unequivocal that Claimant was responsible for the accident by his failure to abide by Rule 202B.

An examination of the transcript of the proceeding indicates that Claimant was well aware of the subject matter of the investigation and indeed was prepared for a defense. At no time in the course of the investigation did he require a recess for the purpose of preparing such a defense. He was obviously made aware by the notice of hearing as to the subject matter of the investigation. With respect to the allegation concerning a hearing prior to the discipline, Carrier's position is substantiated by Award 108 of this Board in which Claimant was dismissed from Carrier's service after an investigation and hearing as in the instant dispute.

The transcript of the investigation also reveals clearly that Claimant was guilty of failing to follow Carrier's rules and thus was directly responsible for the accident

in question. The few discrepancies in his testimony as compared to that of Carrier witnesses were resolved on a credibility basis by the hearing officer in favor of the Carrier witnesses. Thus, from a standpoint of Carrier having sustained its burden of proof, there is no question but that evidence supported its conclusion.

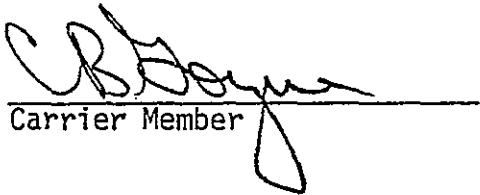
In view of the seriousness of Claimant's error and the costly implications of that error, there is no basis for disturbing the discipline assessed. In fact, since Claimant was reinstated to his former position, the only issue is whether or not he is also entitled to complete exoneration and back pay. That conclusion cannot be reached by this Board. The claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman


Carrier Member
Employee Member

Houston, Texas
May 20, 1980