

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 14
Docket No. 14

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Chicago and North Western Transportation Company

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

- (1) The twenty (20) day suspension assessed Truck Driver D. S. Smith for alleged failure to safely operate a Company vehicle when you drove around a stopped school bus displaying stop sign in West Chicago, Illinois, was without just and sufficient cause on the basis of an unproven charge and in violation of the Agreement. (Organization File 3D-3494; Carrier File 81-83-51-D).
- (2) Truck Driver D. S. Smith shall be allowed the remedy prescribed in Rule 19(d).

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employee and the Carrier involved, are respectively employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute herein.

Claimant was employed by the Carrier as a Fuel Truck Driver for Tie Gang No. 910, working in the vicinity of West Chicago, Illinois. On October 29, 1982, claimant was charged:

"Your failure to safely operate Vehicle No. 21-2147 on Friday, October 29, 1982, when you drove around a stopped school bus displaying stop signals near Church and Washington Streets in West Chicago, Illinois."

The investigation was originally scheduled for November 2, 1982, but was postponed to November 5, 1982, following which claimant was assessed discipline of twenty days actual suspension. The claim seeks removal of the discipline assessed and that claimant be paid for time lost pursuant to Rule 19(d) of the applicable Agreement. A copy of the transcript of the investigation conducted on November 5, 1982, has been made a part of the record. At the beginning of the investigation, claimant's representative objected that the charge indicated prejudgment by the Carrier. We find no valid basis for such objection. The letter of October 29, 1982, was a letter of charge and nothing more. There was also nothing improper in withholding claimant from service pending

investigation. Rule 19 of the Agreement provides for such.

In the investigation conducted on November 5, 1982, two statements were taken, one from the claimant and one from the school bus driver. The statements were in conflict on most important points. The Carrier, as the trier of the facts, chose to believe the testimony of the school bus driver rather than that of claimant.

It is well settled that a Board of this nature will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing officer. The Board may not reverse the Carrier's determination merely because of conflicts in testimony. The testimony in the present case was sufficient to warrant Carrier's action in imposing the discipline that it did.

The Organization has raised procedural arguments that the officer who conducted the investigation did not render the decision, and that the deciding officer acted as first appeals officer and that claimant was thus denied "his right to due process for a fair and impartial hearing."


In our Award No. 9 we discussed at some length the matter of the conducting officer not rendering the decision and concluded that such procedure was not in violation of the agreement. We adhere to that decision herein.

As to the matter of the deciding officer acting as appeals officer, in the hearing of this dispute the representative of the Carrier stated that on this property such procedure was not unusual. We were also referred to Third Division Award No. 24357, involving this Carrier and another organization, where such contention by the Organization was rejected. We also call the attention of the parties to Third Division Award No. 20637 involving this same carrier, which award was submitted to this Board in another dispute handled in the same group. We find no proper basis for the contention of the Organization in this respect. It is noted that provision is made for further appeal on the property from the decision of the Assistant Vice President & Division Manager.

A W A R D

Claim denied.


Chairman, Neutral Member


Carrier Member


Labor Member

DATED: 2-16-84