

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 20
Docket No. 24

PARTIES: Brotherhood of Maintenance of Way Employees

TC :

DISPUTE: Chicago and North Western Transportation Company

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

- (1) The dismissal of Foreman D. L. Novotny for alleged insubordination was without just and sufficient cause and in violation of the Agreement. (Organization File: 2D-3474; Carrier File 81-83-22-D).
- (2) Foreman D. L. Novotny 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 formerly employed by the Carrier as a Section Foreman at Hampton, Iowa.

As a result of an incident that arose between the claimant and a Track Supervisor on October 2, 1982, and following an investigation conducted on November 3, 1982, claimant was dismissed from service effective with close of work November 12, 1982. In the course of handling of the dispute on the property, it was agreed on May 24, 1983, that claimant would be reinstated with seniority and vacation rights unimpaired, with the understanding that claimant may exercise trackman seniority only for a period of one year from date of reinstatement, and with the further understanding that no compensatory features of any kind were involved for the period of time from date of dismissal through date of reinstatement, and without prejudice to claim for differential in rate between trackman's rate and higher rate where applicable. The terms of the reinstatement are set forth in letter of understanding dated May 14, 1983.

Were the claim before us strictly on the merits and the appropriateness of the penalty imposed, we would have no difficulty in denying it. However, in the handling on the property and before the Board, a procedural issue has been raised and not waived.

Sections (a) and (b) of Rule 19 of the applicable Agreement
read:

"Rule 19 - Discipline

(a) Any employee who has been in service in excess of sixty (60) calendar days will not be disciplined nor dismissed without a fair and impartial hearing. He may, however, be held out of service pending such hearing. At the hearing, the employee may be assisted by an employee of his choice or a duly accredited representative or representatives of the Brotherhood. The hearing will be held within ten (10) calendar days of the alleged offense or within ten (10) calendar days of the date information concerning the alleged offense has reached the Assistant Division Manager-Engineering. Decision will be rendered within ten (10) calendar days after completion of hearing. Prior to the hearing the employee will be notified in writing of the precise charge against him, with copy to the General Chairman, after which he will be allowed reasonable time for the purpose of having witnesses and representative of his choice present at the hearing. Two working days will, under ordinary circumstances, be considered reasonable time. The investigation will be postponed for good and sufficient reasons on request of either party.

(b) When discipline is administered, copy of the discipline notice and the transcript will be furnished the employee and the General Chairman."

Section (b) specifically stipulates that a copy of the discipline notice and transcript will be furnished the employee and the General Chairman. The record also contains a Letter Agreement between the authorized representatives of the parties dated February 21, 1980, and which reads in pertinent part:

"You stated that you would advise me whether the cases could be disposed of on the basis that the divisions will issue transcripts to the General Chairman at the time the discipline notices are issued to the employee, that is, within ten days of the hearing, and it appears that the divisions will be able to comply with your request."

The record is clear that the transcript of the investigation that was conducted on November 3, 1982, was not furnished to the General Chairman within ten days of the hearing, as required by the Letter Agreement of February 21, 1980.

While we are always hesitant to dispose of claims or disputes on technicalities, where the language of an agreement is

SBA 924
Award No. 20
Docket No. 26

clear and unambiguous, we must apply it as written. We will sustain the claim for difference between trackman's rate and foreman's rate, where applicable, for the one-year period following reinstatement in May, 1983.

A W A R D

Claim sustained to the extent indicated in Findings.

ORDER

The Carrier is directed to comply with this Award within thirty days from the date hereof.

Paul P. Carter
Chairman, Neutral Member

J. D. Crawford
Carrier Member

H. G. Hopper
Labor Member

Date: 5/8/84.