

NATIONAL MEDIATION
BOARD

JUL 16 1 21 PM '91

NATIONAL RAILROAD
ADJUSTMENT BOARD

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1011

TRANSPORTATION*COMMUNICATIONS INTERNATIONAL UNION

and

CONSOLIDATED RAIL CORPORATION

AWARD NO. 80

Case No. 80
Docket No. CK-452D

STATEMENT OF CLAIM

(a) The Carrier acted in an arbitrary and capricious manner when it permitted Claimant Elaine Givner to be unjustly treated as set forth in Claimant's charge of September 15, 1989.

(b) Carrier violated Rules 42, 43 and 44 of the Rules Agreement when it failed to:

1. Schedule the unjust treatment investigation within ten calendar days of the date charged September 15, 1989 and;

2. When the Manager, Labor Relations failed to grant the hearing on appeal within ten calendar days from receipt of appeal and,

3. Upon decision to grant the unjust treatment investigation dated October 30, 1989 on November 1, 1989 Carrier further delayed scheduling until November 8, 1989 and;

4. Failed to render a decision on the unjust treatment investigation within 15 days

after completion of the investigation i.e.,
December 11, 1989.

(c) Claimant was unjustly treated and the Board should so rule. The Board should further rule that Manager Manpower Control E. R. Evans be issued a reprimand for his irresponsible action in this matter.

F I N D I N G S

On September 15, 1989, the Claimant requested an unjust treatment hearing under Rule 44 in reference to incidents occurring on August 31, 1989 and September 5, 1989.

The latter incident was also the subject of a disciplinary investigative hearing, and the Board finds that this was the proper forum for review, requiring no further discussion here.

Rule 44, Unjust Treatment, reads as follows:

An employee who considers himself unjustly treated, otherwise than covered by these rules, shall have the same right of investigation, hearing or appeal and representation as provided in Rules 42 and 43, if written request which sets forth the employee's complaint is made to his supervisor within thirty (30) calendar days of cause of complaint.

As to the August 31, 1989 incident, it is the Organization's contention that the Carrier violated Rule 44 by failure to apply to the procedure the time limit rules which are detailed in Rules 42 and 43. The Board finds that the applicability of such time limits to Rule 44 hearings has

been previously reviewed and disposed of in an Award involving the parties herein and more recently confirmed by another Award also involving the same parties.

Public Law Board No. 2037, Award No. 80 (Seidenberg) stated as follows:

The Board concurs with the Carrier that Rule 44 requires the Carrier in an Unjust Treatment Hearing to afford the Claimant a hearing, representative and right of appeal as provided for in Rules 42 and 43. However, in the absence in Rule 44 of any mention that the time limits of Rules 42 and 43 shall apply, it is an undue extension of Rule 44 to make the aforementioned time limits an integral part of Rule 44. The time limits of Rules 42 and 43 are discrete elements of these rules. Moreover, in this Industry time limits are invested with such significance and importance that it would be injudicious to incorporate them into a rule, by inference, absent a specific reference or indicated intention that they were to be so incorporated.

Much more recently, Public Law Board No. 3775, Award No. 49, supporting the Seidenberg conclusion, stated as follows:

This Board does not find Award 80 of Public Law Board No. 2037 to be clearly incorrect. Neutral Seidenberg set forth reasonable grounds therein for concluding that the time provisions of Rules 42 and 43 should not be strictly applied in Unjust Treatment Hearings, and that the Carrier is only obligated to render its decisions within a reasonable time. Given the facts of the instant dispute, the Board cannot conclude that Claimant's Unjust Treatment Hearing and subsequent decision and appeals were handled in

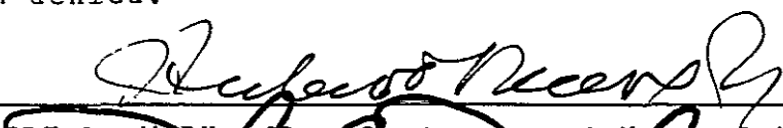
an unreasonably delayed manner. Accordingly, the Organization's timeliness contention must be rejected.

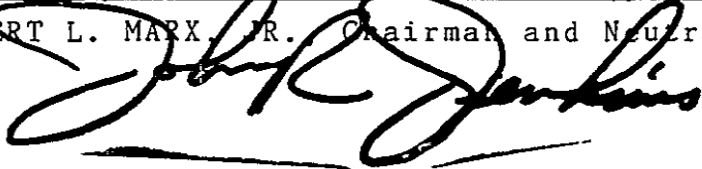
In this instance, the Manager, Manpower Control did reject the request for an unjust treatment issue, but this was reversed by the Manager, Labor Relations. The hearing was held, and the contention of unjust treatment by the Claimant's Supervisor was rejected.

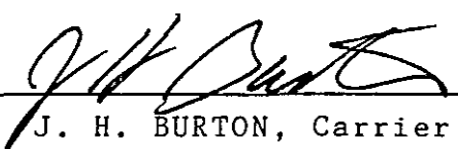
The Claimant received the opportunity for review of alleged unjust treatment by her superior. She was not subject to disciplinary action for the August 15 incident. In supporting the view that the time limits for disciplinary procedures in Rules 42 and 43 are not applicable here, the Board concludes that no relief is required.

A W A R D

Claim denied.


HERBERT L. MARX, JR., Chairman and Neutral Member


J. R. JENKINS, Employee Member


J. H. BURTON, Carrier Member

NEW YORK, NY

DATED: JUL 02 1991