

C&NWT FILE NO: 2-1-2598
UTU CASE NO: K1060-577-83

SPECIAL BOARD OF ADJUSTMENT NO. 235

DOCKET NO: 8290
AWARD NO: 2699

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION
CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

Statement of Claim:

"Request and claim of Conductor Charles E. Gordon, Galena Division, for reinstatement to the service with seniority and vacation rights unimpaired, and that he be compensated for any and all time lost account dismissed from the services of the Transportation Company on February 9, 1981, due to his failure to successfully pass the conductor's examination the second time. Request and claim based on the provisions of Road Rules 83 and 93."

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

The carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

Many cases find their way to the Board, which, if they had been intelligently or thoroughly discussed during handling on the property, would never have reached this level. The present case, a compendium of confusion, contradiction and non-communication, is a prime example. It involves a claim for reinstatement and compensation for time lost by an employee who was removed from service by Carrier allegedly under the provisions of the May 1, 1973 Conductor's Training Agreement. That Agreement requires brakemen to enter and successfully complete a training program leading to their certification as qualified conductors and acquisition of conductor seniority. Article V provides that if a trainee fails to pass the required final examination on the first attempt, he will be given a second opportunity to pass the examination not less than 30 or more than 90 days after that failure.

Claimant entered the training program on November 3, 1980, as a member of Conductor Class No. 62, attended classes, and took the final examination on November 21, 1980. He failed and was so notified by letter of November 28, 1980; that letter also informed him that he was entitled to a second examination to be given on January 23, 1981, and that he could attend the training sessions

of Class 64 commencing on January 5, 1981 if he so desired. Despite his failure, Carrier treated him as if he had passed the examination of November 21 by assigning him to three student runs between December 9, 1980 and January 6, 1981, then permitting him to mark up on the conductor's extra board and calling him for conductor's service on January 9, 13, 17, 19 and 22. However, after Claimant failed to take the January 23 examination, Carrier wrote him on February 2 that "due to your failure to successfully pass the conductor's exam the second time, your employment . . . is terminated."

At the hearing before the Board, the Organization submitted as an exhibit a statement by Claimant, signed and notarized on April 9, 1981, in which, in addition to describing the conductor service recited above, he stated that after his January 22 conductor assignment, he went to the VA Hospital and was told by the doctor to take bed rest for five days; further, that his wife telephoned the chief caller, who said that "he would pull my ticket, it would be in his office on my return to work," that his vacation started on January 25 and ran to February 8 and that on January 30, he took his doctor's statement to the chief caller, who told him that he would be rescheduled for his conductor examination, but despite that advice, he received a letter the following week informing him that his services were terminated. He also stated in his affidavit that during his first examination on November 21, he was interrupted and required to go to the Carrier's office to discuss a broken bed in a hotel room which he had occupied, and that the interruption caused him anger, mental frustration, physical breakdown and confusion, and broke his concentration on the test. The Organization also submitted at the hearing before this Board a certificate it had obtained from the VA just the day before - April 20, 1982 - showing that Claimant had been examined there on January 23, 1981, the day of the second examination.

It appears from Claimant's statement and the VA certificate that his first examination was unfairly interfered with and that he missed the second examination because of illness; if these matters had been brought to the attention of an appropriate Carrier official at the time, it appears quite likely that Claimant would have been reinstated and given another opportunity to pass the examination; at any rate, that would have been the reasonable reaction; if Carrier terminated his seniority in the face of such evidence, it would clearly have been liable to pay him for any time lost. Unfortunately, neither Claimant nor his Organization followed the sensible course of bringing those facts to the attention of Carrier. Instead, on April 17, 1981, the Local Chairman wrote to the Division Manager claiming that "evidently, Gordon never was notified . . . that he had failed the Conductor's Training Class No. 62", basing that clearly erroneous statement on the fact that Claimant had been used as a student conductor

and conductor after the examination; meanwhile completely ignoring the recital in Claimant's affidavit of a week earlier in which he made clear that he knew he had to take the second examination and had obtained a promise from the chief caller that he could take it on a later date. Not a word was mentioned in the Local Chairman's letter of the relevant and important facts about Carrier's interference with Claimant during the first examination and his illness on the date of the second.

On June 11, 1981, the Division Manager replied, enclosing a copy of his November 28, 1980 letter to Claimant that he had failed the first examination. He then went on to say, incorrectly and inexplicably, that Claimant had attended Class 64 and "had failed the Conductor's exam the second time". Carrier seems not to have had the slightest idea of how it was handling Claimant or what Claimant had been doing since the first examination or the slightest interest in finding out; the Division Manager made no reply or comment to the detailed information about Carrier's use of Claimant as a conductor after he failed his first examination which had been recited in the Local Chairman's letter, nor was he able to find out, apparently, that Claimant never took the second examination.

In July, the General Chairman wrote the Manager of Labor Relations demanding Claimant's reinstatement and compensation, again on the basis that he had performed conductor service, not mentioning his illness or the other circumstances affecting his examinations. In September, the Manager of Labor Relations replied, stating, contrary to the Division Manager, that "claimant failed to show or take his final examination" on January 23 and was therefore terminated; again, no mention or explanation of Claimant's service as a conductor after he had failed the first examination. On February 10, 1982, there is a final letter from the Manager of Labor Relations to the General Chairman stating that the case had been discussed in conference on January 28, and that he saw no reason to change his denial of the claim.

It is difficult for the Board to understand what was discussed in conference, since at the hearing before the Board on April 21, 1982, the Carrier representatives stated that they had not seen Claimant's affidavit prior to that date, nor of course had they seen the VA certificate since that had been obtained by the Organizatin just the day before.

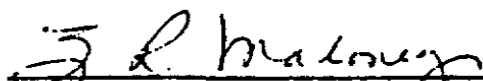
We have recited all of these details at the cost of considerable aggravation and wasted time and effort, in the hope that the parties might be impressed with how inept and slipshod handling of a piddling and easily rectified error can blow it up into a case before this Board involving a claim for a considerable amount of money and very difficult for the Board to deal with. The most

elementary intelligent communication between the parties within the week after Claimant's dismissal would have resulted either in his reinstatement, or, if Carrier had persisted in his dismissal, in the eliminatin of Carrier's contention on April 21, 1982, that it was hearing the relevant and material facts for the first time.

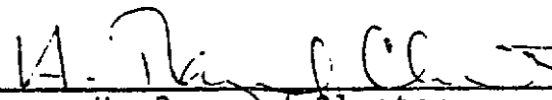
In view of Carrier's claim of surprise, the Board granted the Carrier request to submit a post-hearing statement from the chief caller. In his statement, the chief caller says that he does not recall Claimant ever seeing him prior to his second examination, and that in any case, he would not have granted him a postponement since that is out of his jurisdiction. Carrier offered no rebuttal to Claimant's allegation that his first examination was interrupted. As to Carrier's use of Claimant as a conductor after he failed the first examination, Carrier representatives before the Board stated that it was simply a mistake.

We are inclined to give more weight to Claimant's statement made close to the events than to the chief caller's statement made more than a year later. On the evidence before us, we are convinced that Claimant was deprived of his rights to fair examinations to which he was entitled under the Training Agreement - the first time by being interrupted and the second time by not being excused because of illness. He is entitled to be reinstated and to begin the course of training under the Training Agreement afresh, with all rights of an employee entering the course for the first time. As to compensation for time lost, we feel that Claimant and his representatives bear some responsiblity for the excessive time which has elapsed before all of the facts were put before appropriate Carrier officials, and for that reason, we will make the Solomonic decision that Claimant is to be paid compensation for one-half the time lost between his dismissal and his actual reinstatement.

Award: Claim disposed of in accordance with Findings. Carrier shall comply with the Award within 45 days of the date issued.


G. R. Maloney, Employee Member


R. W. Schmiede, Carrier Member


H. Raymond Cluster
Neutral Member and Chairman

CHICAGO, ILLINOIS

May 20, 1982