

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. /D/
Docket No. 115

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 Carrier violated the Agreement when it wrongfully dismissed Foreman S.J. Wypych without a fair and impartial hearing; and, when the Carrier failed to observe the required hearing procedures as prescribed in Rule 19 of the effective Agreement. [Organization File 3KB-4231 D; Carrier File 81-86-128]
- (2) In accordance with Rule 19(d), the Claimant shall be reinstated with all seniority rights unimpaired and compensated for all actual time lost while out of service."

FINDINGS:

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

On August 4, 1982, Claimant injured his mouth while he was on duty. Claimant filed an injury report that stated he was injured while climbing onto a machine; Claimant later filed a civil suit against Carrier in connection with the incident. During discovery in connection with this suit, Carrier's attorney found evidence that Claimant may instead have been injured during an altercation with another employee. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility in connection with falsifying an injury report on August 4, 1982, when you alleged to have sustained injuries to your face and mouth while climbing onto a junior tamper at Waukegan Yard at approximately 9:00 A.M.

After two postponements, the investigation was held on August 7, 1986, and a copy of the transcript has been made a part of the record. We

find that the investigation was conducted in a fair and impartial manner.

The Organization asserts that under Rule 19(a) of the controlling agreement, an investigation must be held within ten days of the date that the Assistant Division Manager-Engineering ("ADM-E") receives information of an alleged offense. The issue in this matter, therefore, is whether the ADM-E of the Wisconsin Division received notice of the alleged incident more than ten days before the hearing took place. The Organization contends that the transcript indicates that ADM-E Larson first received information about the allegedly falsified injury report in 1985; this constituted notice of the occurrence to the ADM-E under Rule 19(a).

The Organization further argues that it has shown a prima facie violation of the time limits because it is undisputed that the hearing was held more than ten days after the alleged offence occurred. Carrier has failed to meet its burden of showing that the hearing was held within 10 days of the ADM-E's knowledge of the alleged offense. ADM-E Larson's admission that he had information about a possible violation and failure to set an investigation within ten days bars an investigation at a later date. Moreover, Carrier's attorney had notice of the alleged offense more than 10 days before the hearing was held. The Organization therefore contends that Carrier failed to meet Rule 19(a)'s time requirements.

The Organization also asserts that Carrier has not shown good reason for any delay in the ADM-E's acquisition of knowledge about the alleged offense. The Organization contends that there is no reason why information sufficient to warrant civil proceedings in May 1986

was insufficient to warrant a disciplinary investigation in 1985; Carrier has not shown that it had new or additional information in 1986. The Organization further points out that discovery is the purpose of a disciplinary investigation, so such proceedings are not different from discovery in civil proceedings.

The Organization additionally argues that Carrier denied Claimant the right to confront witnesses who testified against him, thus failing to give Claimant a fair and impartial hearing. Moreover, the record does not support Carrier's position that Claimant did not injure his hand in a fall on the steps of the tamper. The Carrier witnesses who testified about a fistfight involving Claimant did not fully corroborate each other's testimony. The Organization contends that Carrier has not shown that Claimant's injury report was falsified. The Organization therefore argues that the claim should be sustained.

Carrier contends that the charge against Claimant was proven, and the assessed discipline was warranted. Carrier argues that there is substantial evidence in the record that Claimant knowingly falsified his accident report and obtained false reports from two other employees. Carrier contends that Claimant's actions constitute a serious violation of Carrier rules requiring honesty and accuracy in accident reports. Carrier therefore asserts that the assessed discipline was neither arbitrary nor unreasonable.

Carrier further contends that ADM-E Larson heard a rumor about Claimant's possible falsification of the injury report in 1985 and asked the roadmaster if he could verify it; the roadmaster could not do so. Carrier contends that because no further information was then available, the 1985 rumor was not sufficient to trigger Rule 19(a)'s

time limit. Carrier therefore asserts that the investigation was conducted in a timely manner, and the claim should be denied in its entirety.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the offense with which he was charged. The record is absolutely clear that the injuries that the Claimant sustained and attributed to an accident on the job actually resulted from a fight with another employee. Therefore, the Claimant filed a false injury report and collected monies for an alleged industrial accident which never occurred.

The Organization also relies on a procedural argument, contending that the Carrier was aware of the Claimant's wrongdoing and did nothing about it for over one year. Therefore, the Organization contends an investigation should have been held much earlier, pursuant to Rule 19(a); and, since it was not, the claim should be sustained.

However, the record is clear that the information regarding the Claimant's wrongdoing was not available to the Carrier until the time that the Carrier imposed the discipline. The rules provide that the time limits commence when the information concerning the wrongdoing is received by the assistant division manager of engineering. The evidence supports the Carrier's position that although there was a rampant rumor that the Claimant had sustained his injuries from an altercation with another employee, it was not actually verified until a much later date, shortly after which the Carrier began proceedings leading to the Claimant's termination.

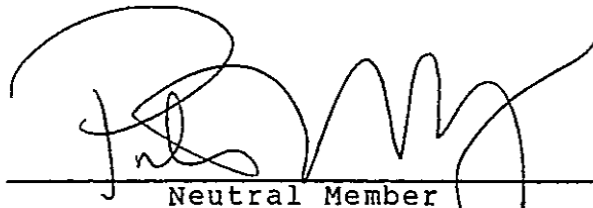
The Organization has submitted a decision from Public Law Board

2960, which holds that the time limits do not run until the assistant division manager of engineering has sufficient information or reasonable cause to believe a violation has occurred. In this case, however, the Carrier did not have the reasonable cause or sufficient information to bring the charges at an earlier date. Hence, the procedural objections must be overruled.

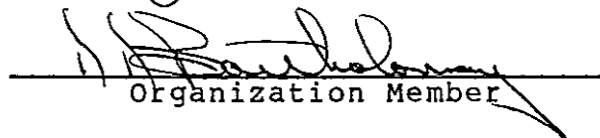
Finally, we turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find its action to be unreasonable, arbitrary, or capricious. Filing a false report and obtaining money damages is the type of behavior which often leads to termination. This Board cannot find that the action by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

Award:

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: February 4, 1988