

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY

Case No. 189

Award No. 174

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

1. The five (5) day suspension assessed Machine Operator C. H. Bochmann for his alleged responsibility in sustaining a personal injury was without just and sufficient cause and capricious (Organization File 4LF-2365D; Carrier File 81-90-101).
2. The Carrier violated the Agreement when it did not timely notify the Claimant and the General Chairman of the discipline imposed as required by Rule 19(a) and (b).
3. As a result of either Part 1 and/or Part 2 above, Claimant C. H. Bochmann shall be allowed the remedy prescribed in Rule 19(d) of the June 1, 1985 Agreement.

FINDINGS:

Claimant was employed as a machine operator. On May 29, 1990, Claimant was attempting to reaffix the belly pan of a 1150 bulldozer. Sometime during the performance of that work, Claimant sustained a pinched nerve in his lower back.

Claimant was charged with being responsible for causing a back injury to himself. Subsequent to a formal investigation, the Carrier found the Claimant "responsible for using improper procedures" when installing a belly pan under the 1150 dozer on May 28, 1990, "thereby causing injury to himself, in violation of Rules 910 and 910(A)". The Claimant was assessed a five-day suspension.

The Organization filed the instant claim on behalf of the Claimant contending, inter alia, that the Carrier violated the Agreement "when it did not notify the Claimant and the General Chairman of the discipline imposed as required by Rule 19(a) and (b)".

The parties being unable to resolve the issue, this matter came before this Board.

This Board has reviewed the procedural argument raised by the Organization and we find that the Carrier was in violation of Rule 19 when it failed to notify the Claimant and the General Chairman of its decision within the required ten calendar day period.

Rule 19 states:

(a) Decision will be rendered within ten (10) calendar days after completion of hearing.

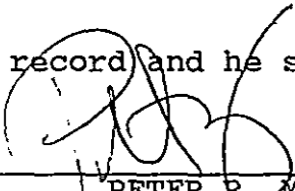
(b) When discipline is administered, copy of the discipline notice and the transcript will be furnished the employe and the General Chairman. Divisions will issue transcripts to the General Chairman at the time the discipline notices are issued to the employe, that is, within 10 days of hearing.


The record reveals that the postmark on the envelope which contained the transcript and the notice to the General Chairman is dated July 9, 1990. The hearing in this case was held on June 28, 1990. Consequently, the notice of discipline and transcript were sent to the General Chairman in violation of the rules.

Although the Carrier argues that that rule violation may not be enough for the Organization to prevail, when coupled with the lack of evidence presented at the hearing, this Board has no

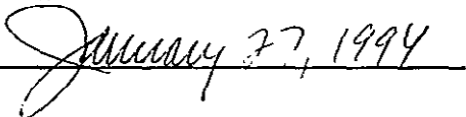
SBA 924-Award 174

from the Claimant's record and he shall be made whole.

  
\_\_\_\_\_  
PETER R. MEYERS  
Neutral Member

  
\_\_\_\_\_  
Joan M. Lawrence  
Carrier Member

  
\_\_\_\_\_  
H. Bartholomew  
Organization Member

Dated: 

January 27, 1994

choice other than to sustain the claim.

This Board has reviewed the evidence and testimony in this case and we find that in the six-page transcript of the hearing at which only the Claimant testified, the Carrier has not presented sufficient evidence to support its finding that the Claimant acted in violation of the Rules and deserved a five-day suspension. In his testimony, Claimant Bochmann makes it clear what he did on the date in question. The Claimant testified concerning his injury and his previous medical background, but there is a lack of testimony indicating that he was in violation of the Rules or normal procedures when he sustained his injury. There is no testimony that he performed in a way in which he increased the possibility of his being injured. There was no testimony that when he was working on the date in question he was in violation of Rules 910 and 910(A). Although he admitted that he did not ask for assistance, either mechanical or human, the Carrier has not presented sufficient evidence that demonstrated assistance was absolutely required under the circumstances.

For all of the above reasons, the claim in this case must be sustained.

AWARD:

Claim sustained. The five-day suspension shall be removed