

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY
(former Chicago & North Western Transportation Company)

Case No. 243

Award No. 220

STATEMENT OF CLAIM:

The Agreement was violated when the Carrier failed to properly charge Machine Operator B. Arellano pursuant to Rule 19 of the Agreement and instead had Mr. Arellano sign a waiver of hearing form. (Organization File 9KB-6438D; Carrier File No. 1145716; Docket No. 243.)

FINDINGS:

Claimant B. Arellano was employed by the Carrier as a machine operator at the time of this claim.

On May 13, 1998, the Carrier issued Form DAF-1 to the Claimant notifying him of a violation of Rule 42.3 when, on May 11, 1998, he entered CPY0904 with a Mark IV Tamper without proper authorization. The Claimant signed the form, waiving his right to a hearing in connection with the incident and accepting the discipline of an UPGRADE Level 3.

On May 27, 1998, the Organization filed a claim on behalf of the Claimant, contending that the Carrier violated Rule 19 of the parties' agreement. The Organization contends that neither the Claimant nor the Organization was provided with the required advance notice of hearing or the precise charges against the Claimant. The Organization argues that the Claimant could not waive his rights to a fair and impartial hearing when no notice had been received advising him that such a hearing even existed or was pending. The Organization argues that

Rule 19 does not provide for the waiver of the Claimant's right to a fair and impartial hearing under the Agreement and that the waiver is not a tool for the Carrier to deny the Claimant due process. The Organization contends that the Carrier must comply with the terms of Rule 19 and give notice of the charge to the Claimant and the Organization and schedule a hearing before any hearing can be waived by the Claimant.

The Carrier denied the claim, contending that the Claimant did not want a hearing. The Carrier argues that the Claimant was advised of the charges that he would be charged with prior to his waiver. The Carrier contends that a lengthy discussion occurred prior to the Claimant's signing of the waiver and the Claimant indicated his understanding of the charges against him. Therefore, the Carrier argues, the Claimant freely and knowingly waived his right to a hearing and accepted the discipline, nullifying the Organization's claim. The Carrier also contends that waivers have been used on many occasions in the past under Rule 19, and the waiver signed by the Claimant fully comports with that rule. In addition, the Carrier argues that Rule 19 would only be applicable if the Claimant did not believe that he was guilty of the charges and wished to have an investigation and then appeal the decision if found guilty. The Carrier contends that the Organization is seeking a change in the work rules by advancing the Rule 19 issue to this Board, which, the Carrier argues, is improper. The Carrier argues that no notice of investigation was required in this case since the waiver was freely agreed to by the Claimant and the Claimant had the right to represent himself in this situation and forego the Organization's representation.

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

This Board has reviewed the record in this case, and we find that, despite the language set forth in Rule 19, the Carrier has demonstrated that it has been a long established practice of

extending to the employee the option of waiving a hearing and accepting discipline.

Consequently, the claim must be denied.

The Organization focuses on the language in Rule 19 that states:

. . . 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 representatives of choice present at the hearing.

The Organization contends that that language guarantees to the employee the right to have the Organization's participation in the resolution of his dispute with the Carrier. However, a close reading of that section makes it clear that it assumes that there will be a hearing and that prior to the hearing, the employee will be notified of the precise charge against him as will the Organization.

In this case, the Carrier went to the employee shortly after the incident giving rise to the discipline. The Carrier's representative and the Claimant discussed the alleged wrongdoing and then the Claimant was given an opportunity to make an educated and informed decision as to whether or not he wanted to have the matter proceed to a hearing or he wanted to waive the hearing and accept the proposed discipline. It is fundamental that employees have a right to represent themselves without the involvement of the Organization and, in this case, this Board finds that there was nothing wrong with an employee executing a waiver after having a discussion with the Carrier representative before the matter proceeds to the hearing stage and before the Organization becomes involved.

As in several Third Division awards, including 2339 and 18468, the employee in this case voluntarily acknowledged the commission of the offense charged and voluntarily waived his

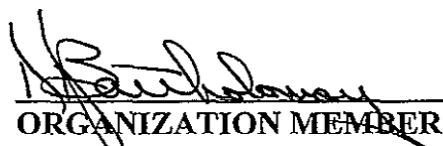
rights to a hearing. This Board does not find that that action was a denial of his due process rights. The record reveals that the employee was informed and provided the opportunity to elect the provisions of Rule 19 and the employee in this case elected not to invoke Rule 19. The employee freely admitted his guilt and accepted the discipline and waived his right to a hearing under Rule 19.

The Organization has admitted that there is a long-standing practice of having employees sign waivers on the C&NW. If the Organization wants to change that practice by requiring that the notice and charges be sent to the Organization even prior to a meeting with the Carrier representative, that type of language must be added to the rule. Currently, the rule only requires that the Organization be notified prior to the hearing. The Claimant waived his right to the hearing prior to the hearing and, therefore, there was no requirement that the Organization be notified. Consequently, the claim in this case must be denied.

Award:

The claim is denied.


 PETER R. MEYERS
 Neutral Member


 ORGANIZATION MEMBER

DATED: 4-26-2000


 CARRIER MEMBER

DATED: 4-26-2000