

The Fourth Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (United Transportation Union - Yardmasters Department)
(
(CSX Transportation (former Baltimore and Ohio
(Railroad)

STATEMENT OF CLAIM:

Claim for former unassigned Yardmaster E. R. Wolfe I.D. 1520277, of Philadelphia Pa. for one day's pay at the Yardmaster pro rata rate of pay for January 30, 1986 and everyday thereafter that the claimant is deprived of working as Yardmaster until the claimant is restored to service as Yardmaster with all rights and seniority under all local and national agreements, and

(a) Clear the service record of the claimant of the charges and any reference in connection thereto.

(b) Promptly restore the claimant to duty as yardmaster with vacation and other rights unimpaired.

(c) Pay the claimant in addition to every day thereafter, all wages she would have earned through working overtime and/or doubling and holiday losses.

This claim is made because the claimant was removed from all Yardmaster service at Philadelphia by the Carriers' Terminal Trainmaster B. J. Overbay on January 30, 1986 and held out of service as unassigned yardmaster pending investigation. Investigation was held on February 11, 1986 and claimant was notified by letter dated February 27, 1986 from Terminal Trainmaster Overbay that she had been disqualified as a yardmaster as the result of the February 11, investigation.

FINDINGS:

The Fourth Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was disqualified as Yardmaster by letter of February 27, 1986. The Organization raises numerous procedural issues, as well as argues that the Carrier did not meet its burden of proof. Among the procedural issues raised are a multiplicity of roles, a failure to proffer the charges in writing as per Article 22(a), employing the stenographer as witness, imprecise charges, a failure to hold the Investigation within ten days, and a failure to respond within the time limits during appeal.

In the facts of the instant case, the Trainmaster contacted the Claimant at home in the morning of January 30, 1986 to determine why instructions were ignored and false statements issued. He testified that after discussion with the Claimant and consideration of the issue, he called her again that evening expressing his "dissatisfaction" and informing her that an Investigation would be held.

The charge letter was signed by N. Gresham. During the Investigation the Trainmaster testified that "I dictated a charge letter, the charge letter that you see before you, to the Stenographer on February 3rd."

The Trainmaster was the chief witness against the Claimant. He stated that he was clearly dissatisfied with Claimant's work, as his instructions had not been followed. The testimony of the Trainmaster was contradicted by the testimony of the Claimant.

The Organization argues that the Trainmaster decided, wrote and issued the discipline. The Carrier denies that this was the case arguing that the decision was made by the Investigating Officer, Mr. Benson, concurred with by his superiors. After rebuttal, the Carrier offers no evidence for such an affirmative defense. The only evidence of record that this Board finds is the discipline notice. It was signed by the Trainmaster.

In the instant case the Trainmaster was personally involved in prejudging the Claimant's actions, in such a manner as to remove her from service. The probative evidence indicates that the Trainmaster dictated the charges against the Claimant which were then signed by another Carrier official. One charge involved the following of the Trainmaster's instructions. The Claimant and the Trainmaster gave differing versions to which conflicting testimony required a credibility determination. Not only was the Trainmaster the primary witness, but he also issued the assessed discipline. Nowhere does the Carrier deny that the Trainmaster was involved in the decision with the Hearing Officer, Mr. Benson. Such action indicates a process whereby the Trainmaster had a problem with the Claimant, accused and removed her from service, dictated the charges against her, was the primary witness disagreeing with her version of the facts and then signed the discipline against her in which at the least, prior to signing he "concurred" with the decision on the truth of his own testimony.

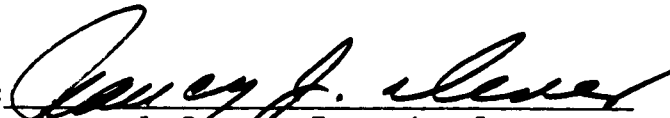
This Board cannot find precedent to support a finding of guilt in these circumstances. The multiple roles of the Trainmaster substantially influenced the results, prejudicing the Claimant's rights. We also note other procedural inadequacies. Under the full weight of this record, we are forced to follow a long-standing record of Awards on this property (Public Law Board 2486, Award No. 2) and other properties, (Public Law Board 2719, Award No. 14; First Division Award 10616; Third Division Awards 21040, 20471 and Fourth Division Awards 2167, 3382) in sustaining the Claim on procedural grounds to the extent provided for in Article 22(d) of the parties' Agreement.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest:


Nancy J. Deves - Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1988.

INTERPRETATION NO. 1

TO: AWARD NO. 4666

DOCKET NO. 4634

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Referee Marty E. Zusman, Referee

NAME OF ORGANIZATION: United Transportation Union - Yardmasters Department

NAME OF CARRIER: CSX Transportation (Former Baltimore and Ohio Railroad)

In Award 4666 this Board after full and complete study of the record sustained the Claim "to the extent provided for in Article 22 (d) of the parties' Agreement."

In making the Award effective, the Carrier took into account the income the Claimant had earned as a Brakeman. The Carrier calculated the difference of her straight time daily pay between her earnings as Brakeman and what she would have earned if she had been paid her Yardmaster's daily rate.

The Organization argues that the Carrier has failed to satisfy the terms of the Award. It is the Organization's position that Award 4666 requires the Carrier to ignore Claimant's wages as a Brakeman as those wages are not "outside employment." It argues that the Claimant is due one day's pay for every day she was unable to work as Yardmaster.

The language of the Agreement must hold. It was the intent of the Award to sustain the Claim as submitted and argued by the parties on the property. It was the intent of this Award that the Claimant be compensated within Rule 22(d) which states that:

"(d) If the final decision decrees that the charge or charges... are not sustained, the record shall be cleared of same and the employee reinstated and compensated for the difference between the amount he would have earned in service and amount he earned from outside employment during the period he was out of service."


Award 4666 sustained the Claim to the extent provided by Article 22(d). Award 4666 was not ambiguous. It sustained the Claim as it had been submitted by the Organization and joined by the parties on the property. After a thorough review of our previous decision as presented in Award 4666, we state again that the Claim is to be sustained as presented. We find no ambiguity whatsoever in our Award.

INTERPRETATION NO. 1
TO: AWARD NO. 4666
DOCKET NO. 4634

Referee Marty E. Zusman sat with the Division as a Member when Award 4666 was rendered, and also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of February 1991.