

PUBLIC LAW BOARD NO. 2145

Award No. 1

Case No. 1

Parties Railroad Yardmasters of America
to and
Dispute The Baltimore and Ohio Railroad Company

Statement of Claim: The personal record of Yardmaster L. G. Gilley be cleared of the five (5) days deferred suspension assessed as discipline and that he be compensated for one day's pay for attending a formal hearing on October 17, 1978.

Findings: The Board finds, after hearing upon the whole record and all evidence that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 1973, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearings held.

Claimant Yardmaster was called as a Company witness into an investigation on October 10, 1977 concerning two crew callers who were charged with failure to call an Engineer for his train resulting in a forty-five (45) minute delay to train Manhattan on October 4, 1977. Claimant was sent a notice of investigation on October 11, 1977 reading:

"Attend hearing in Trainmaster's office at Washington, Indiana, at 8:00 AM, CDT, Thursday, October 13, 1977.

"You are charged with responsibility in connection with delay to Train Manhattan at approximately 1:00 AM, EDT on Tuesday, October 4, 1977."

Said hearing was postponed and held October 17, 1977. As a result thereof, Claimant was advised that:

". . . You were at fault at Shops, Washington, Indiana October 3, 1977, in failing to require prompt and efficient discharge of duty by employees subject to your direction, and further failed to see that train crew for Train MMTI was ready for duty at the appointed time in violation of Operating Rules 1401 and 1402 of current CSO/BSO Operating Rules, Form CSR-29, and the discipline administered of 5 days overhead suspension."

The record reflects that Claimant ended his tour of duty as a 2nd trick Yardmaster at 11:00 PM on October 3, 1977. Train Manhattan was called for 1:00 AM, October 4, 1977. The Conductor of said train contacted the 3rd trick Crew Caller, about 1:06 AM, and informed him that the Engineer of the Train did not show up. The Engineer was thereupon called, at which time, a crew caller failure was disclosed because said Engineer had not been previously given a call. This error resulted in the delay to Train Manhattan.

Article 22 - "Discipline" -, in pertinent part, provides:

"(a) Yardmasters shall not be disciplined or dismissed without a hearing before a proper officer. Such employe shall be advised in writing of the precise charge against him, with copy to the Regional Chairman. . ."
(Underlining supplied)

The Board finds that here the notice of investigation given Claimant did not contain the "precise charge" as required by Article 22 and, further, that copy of said notice of investigation was not given to the Regional General Chairman.

Carrier, prior to October 11, 1977, had complete knowledge as to what role Claimant Yardmaster had played in connection with the delay to Train Manhattan on October 4, 1977. The factual situation here is distinguishable from that in Fourth Division Award 1140 cited by Carrier to support the propriety of its notice. Consequently, the notice of investigation given Claimant is deemed to lack the necessary specificity mandated by Article 22's "precise

charge" requirement. The Fourth Division, in its Award 2373 (John H. Dorsey), in part, said:

"A precise charge must satisfy - who? - what? - where? - when? - why?"

Doctor Jacob Seidenberg points out, in Fourth Division Award 2535, that:

"The Carrier is not required to set forth its evidence in the Notice of Charges, but it is required to make clear, unequivocal and definitive statement of the offense or offenses which the claimant is alleged to have committed, and note them in such a way that the claimant may be able to know as to what charges will confront him and also enable him to prepare whatever defense, or defenses, if any, he may wish to offer at the investigation."

Failure to give a copy of the notice to the Regional General Chairman the Board finds, is another failure of adherence to the procedural requirements of Article 22. It represents more than a technical violation of Article 22. Said Article had an important procedural purpose. As such, it was an obligation willingly assumed by Carrier. Failure of compliance makes accomplishment of such purpose impossible. It is noted that Claimant lived in Washington, Indiana while the Regional General Chairman lives in Cincinnati, Ohio. Such fact, reviewed in the light of Carrier's failure, speak for itself.

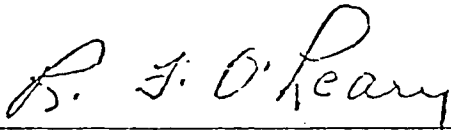
As pointed out in Second Division Award No. 6616 (Dolnick):

"...In any event, Carrier did not notify Claimant's 'duly authorized representative' of the hearing on September 20. This is admitted. The mere fact that the 'duly authorized representative' was at the hearing and participated is no license to the Carrier to violate the provisions of Rule 29. Carrier may not ignore its contract obligations with impunity. ..."

The Board finds that absent compliance with Article 22 Carrier is contractually enjoined from disciplining Claimant and will therefore sustain this claim.

Award: Claim sustained.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.



R. F. O'Leary, Employee Member



L. W. Burks, Carrier Member



Arthur T. Van Wart, Chairman and
Neutral Member