PUBLIC LAW BOARD NO. 2287

AWARD NO. 2

CASE NO. 2

PARTIES TO THE DISPUTE:

Railroad Yardmasters of America

and

Consolidated Rail Corporation,
Atlantic Region

STATEMENT OF CLAIM:

System Docket 634
Northern Region - Detroit Division

Request reinstatement of D. R. Forsyth to position of Yardmaster with claim for all time lost.

OPINION OF BOARD:

On December 2, 1976 Claimant D. R. Forsyth was working as second trip Yardmaster as North Yard, Detroit, Michigan. It is not controverted that on that night Claimant registered a train crew off duty some forty (40) minutes after they actually went off duty. That discrepancy was noted by Trainmaster R. Serens, who questioned Claimant. Claimant told the Trainmaster that he had not noticed anything wrong and had just taken the times from the time slips turned in by the Conductor. The Trainmaster responded that Claimant had let his "buddies" get him into trouble by being a "good guy". Thereupon, at 1:40 A.M. on December 2, 1976, the Trainmaster orally notified Claimant that he was disqualified and removed him from service. This was confirmed later that day by a written notice of disqualification

from Trainmaster Serens as follows:

> This will confirm my verbal disqualification of you as a Yardmaster on the Detroit Division, effective 1:40 A.M., December 2, 1976, due to your improper performance of duty, wherein you allowed the crew of NOB-1 to register off duty in excess of time actually worked.

On the night in question, Trainmaster Serens was Claimant's immediate superior. Under date of December 4, 1976 the Organization's Local Chairman wrote to Mr. Serens appealing the disqualification, filing a claim under Rules 4-G-1 and 6-A-1, and requesting an investigation or hearing. By letter of December 14, 1976 Assistant Superintendent Shephard responded to that dual claim, denying the claim but granting a hearing. Following the hearing, on December 30, 1976 the Division Superintendent denied Claimant's appeal for restoration of Yardmaster rights. Subsequent appeals likewise were denied on the property and the case comes to us for disposition.

A Joint Submission of the parties contains the following "agreed upon facts":

> Claimant D. R. Forsyth was disqualified as a Yardmaster on December 2, 1976 by letter from Trainmaster R. W. Serens.
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> By leter dated December 4, 1976, Local Chairman D. G. Brown appealed the disqualification requesting restoration to Yardmaster service with all rights unimpaired and paid for all time lost. In addition, a hearing was requested.
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> On December 14, 1976, Assistant Superintendent E. E. Shepard replied to Local Chairman Brown's letter by denying the appeal for restoration to service and pay for all time lost. An investigation was scheduled per Local Chairman Brown's appeal and held on December 30, 1976.
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> Subsequent to the investigation, Mr. Coover, Superintendent wrote to Mr. L. R. Hinds, Local Chairman stating the record of investigation supported the disqualification and denied the request for restoration of Claimant's Yardmaster rights.
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> Upon being disqualified by Mr. Serens letter of December 2, 1976, Mr. Forsyth attempted to exercise his seniority as a Yard Conductor. On December 17, 1976, Claimant Forsyth was medically disqualified as a Yard Conductor account being over weight.

The appeal on the property by the General Chairman focused on failure of the immediate superior, Trainmaster Serens, to respond to the claim within the time limit specified in Rule 4-G-1. Indeed, the record shows that Serens, the immediate superior, never did respond to the claim. For reasons developed fully in our Award No. 1, Claim No. 1, that failure proves fatal to Carrier's case. Carrier argues that it took Serens out of the line of appeal to protect Claimant's rights. But Rule 6-A-1 does not grant such latitude. In our judgment Award 4-3382 which holds to the contrary is plainly erroneous. Since the Rule is clear and unambiguous, we cannot spin our own theories of "equity and due process" nor can Carrier avoid the consequences of its failure to adhere to the Rules-expressed mandate. In that connection, we concur with the analysis and result in Award 4-3559.

With respect to the liability for such procedural violation, we have analyzed the leading cases in our recent Award No. 1 and concluded that the findings of Awards 4-3284 and 4-3559 are controlling. In our judgement, we have no alternative under the applicable Rules but to sustain the claim. In so doing, we express no views regarding the merits nor do we reach the several other procedural objections raised by the Organization. Claimant must be reinstated effective December 2, 1976 and made whole by the payment of compensatory damages consistent with Rule 4-G-1. Claimant's subsequent medical disqualification for being over weight is a matter of record but we do not have sufficient information before us at this time to express any view concerning the effect, if any, of that medical disqualification upon his recovery under this Award.

FINDINGS:

Public Law Board No. 2287, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;

2. That the Board has jurisdiction over the dispute involved herein; and

3. That the Agreement was violated.

AWARD

Claim sustained as indicated in Opinion.

Dana E. Eischen, Chairman

J. C. Thomas, Employee Member

N. M. Berner, Carrier Member
Dissenting

Dated: Sept 15, 1979