

PUBLIC LAW BOARD NO. 2287

AWARD NO. 4
CASE NO. 4

PARTIES TO THE DISPUTE: Railroad Yardmasters of America and Consolidated Rail Corporation

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America:
*System Docket No. CR-2
Eastern Region*

Appeal from discipline of twelve (12) days' suspension (time held out of service to apply) and restricted from performing duties as Yardmaster at Edgemoor, Delaware, assessed W. T. Nestor on the following charge:

"Permitting crew 1-B to leave two hours before relieving time at 9:28 PM on September 9, 1978."

OPINION OF BOARD: The facts of the instant case are not in dispute. At the time of the incident considered herein, Claimant was assigned as a second trick Yardmaster at Carrier's Edgemoor Yard, Delaware. On September 9, 1978, Crew 1-B, which was under Claimant's jurisdiction was permitted to take an "early quit" at 9:28 PM, approximately two hours before the completion of the crew's regular tour of duty. At approximately 10:10 PM of the same day, Terminal Superintendent D. J. Durbin gave Claimant a letter notifying Claimant that he was being held out of service pending further investigation.

On September 11, 1978 Claimant was notified to appear for a hearing scheduled for September 18, 1978. Following the hearing Carrier notified Claimant that he was disciplined as follows:

Twelve (12) Days Suspension. Time held out of service to apply. Restricted from performing duties as Yardmaster at Edgemoor, Delaware.

The Organization appealed Carrier's decision on behalf of Claimant both on procedural grounds and on the merits of the case. The Organization argues that the following procedural defects are present: 1) Carrier failed to notify the Division Chairman in accordance with Rule 6-A-1(b) of the Agreement between the parties; 2) Carrier failed to provide witnesses requested by the Organization to be present at the hearing; and 3) Carrier violated Rule 6-A-1(a) when it held Claimant out of service pending investigation of what the Organization argues was not a "major" offense.

With respect to the merits of the case, the Organization argues that, given Carrier's condonation of prior "early quit" incidents and Claimant's previously unsullied employment record, Carrier's assessment of discipline was inappropriately harsh.

Rule 6-A-1(a) and 6-A-1(b) reads as follows:

RULE NO. 6 — DISCIPLINE AND APPEALS

6-A-1. *Discipline.* (a) When a major offense has been committed, a Yardmaster suspected by the Company to be guilty thereof may be held out of service pending hearing and decision.

(b) A Yardmaster who has been in the Company's service sixty (60) calendar days or longer and against whom the Company has preferred specific charges, in writing, shall not be disqualified, suspended or dismissed without a hearing at which he shall be permitted to have a duly accredited representative or representatives of his choosing and witnesses to testify on his behalf. Copy of this notice will be furnished the Division Chairman. The accused Yardmaster or his duly accredited representative shall be permitted to question witnesses insofar as the interests of the accused Yardmaster are involved. The hearings shall begin within twenty (20) calendar days from the date of the employee's immediate supervisor's first knowledge of the Yardmaster's involvement. Copy of the hearing transcript shall be given the accused Yardmaster and his duly accredited representative if he was so represented. Decision shall be given in writing within twenty (20) calendar days after the close of the hearing to the Yardmaster with copy to the Division Chairman. The time limits of this paragraph may be extended by mutual agreement between the Yardmaster or his duly accredited representative and the Company which shall not be unreasonably withheld by either party.

Contrary to Carrier's assertions, failure to properly notify the Division Chairman is not a "technical" violation. Carrier has a serious obligation under Rule 6-A-1 (b), cited above, to comply with proper notification procedures. Failure to do so could have been dispositive of this case, but because the Organization proceeded at the hearing without protest Carrier's failure in this instance is not fatal. Further, we are not persuaded by the Organization's argument that Carrier failed to provide witnesses requested by the Organization. The transcript of the hearing reveals that Carrier offered to recess the hearing to allow the Organization to assemble its requested witnesses, but the Organization declined to take advantage of that offer.

We do find, however, that Carrier was in violation of Rule 6-A-1(a) when it held Claimant out of service pending investigation of the charge against him. We do not find persuasive Carrier's argument that Claimant's offense was a major one. Rather, there is evidence on the record that Terminal Superintendent Durbin acted under the stress of the moment — he had just completed transportation and processing of a personal injury case — in removing Claimant from service for allowing Crew 1-B an "early quit". Further, there is sufficient evidence to support a conclusion that Carrier had condoned the granting of early quits prior to this incident.

In light of the foregoing, and in light of Claimant's previously good employment record, we find Carrier's assessment of discipline to be excessive and inappropriate. We therefore reduce Claimant's suspension to ten days (which should have been assessed and served *after* the hearing) and order his restriction from working at Carrier's Edgemoor facility to be lifted.

AWARD

Claim is sustained to the extent described in the Opinion.

G. R. Welsh, Carrier Member

J. C. Thomas, Employee Member

Dana E. Eischen, Chairman

Date: 9-25-81