

PUBLIC LAW BOARD NO. 2786

Parties Railroad Yardmasters of America

to and

Dispute Consolidated Rail Corporation

Statement of Claim: Appeal from dismissal assessed J. R. Key, Yardmaster, Lincoln Yard, for the following offense:

Your violation of Rule G, Rules for Conducting Transportation, in that you were under the influence of intoxicants during your time on duty as yardmaster, Lincoln Yard, at approximately 9:20 p.m., March 21, 1981.

Findings: The Board, after hearing upon the whole record and all evidence, finds 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 August 13, 1980, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The Claimant was found guilty of a Rule G violation after having been given a hearing in accordance with the agreement between the parties.

The defense by the Organization in the instant matter rests primarily on a procedural violation, to-wit: The failure to furnish copies of the discipline notice and hearing transcript to the Division Chairman in accordance with Rule 6-A-1(b).

The failure to deliver the discipline notice and hearing transcript copies to the Division Chairman is not denied by the Carrier. The Carrier alleges, however, that the failure to deliver those documents to the Division Chairman constitutes only a technical violation of the agreement and was not of such a nature as to prejudice the Claimant's rights with regard to the discipline matter.

The provision in the agreement requiring the Division Chairman to receive copies of the notice and hearing transcript is included therein in order that the Organization in its representative capacity may properly defend the Claimant and prosecute any appeal. Carrier takes the position that inasmuch as an appeal was perfected by the Organization on behalf of the Claimant there was obviously no prejudice to the Claimant's rights and hence no reason to disturb the discipline in the instant case. Should we follow the Carrier's reasoning in this regard, we would in effect be amending the Rule so as to provide that a delivery to the Division Chairman of the discipline notice and hearing transcript would be necessary only in cases where the employee's appeal would be prejudiced by a failure to make that delivery. That is not what the agreement says. We believe the integrity of the agreement with regard to these procedural matters must be maintained. The right to receive the notice of discipline and the hearing transcript is a bargained for right of the Organization and to hold that the Carrier may disregard that provision and place the burden on the Claimant to show that he has been harmed by the failure of the Carrier to abide by the agreement would do an injustice to the agreement between the parties.


The Carrier's failure to abide by the procedure set out in Rule 6-A-1(b), was timely raised and hence was fatal. We will sustain the claim.

AWARD: Claim sustained.

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


G. R. Welsh, Carrier Member


J. C. Thomas, Employee Member


Robert A. Franden, Neutral Member

Issued at Philadelphia, Pennsylvania, June 30, 1982.