

Award No. 11

Case No. 6

PARTIES United Transportation Union
TO and
DISPUTE Burlington Northern Railroad Company

STATEMENT "Claim of Rocky Mountain Seniority District Brakeman Hans
OF CLAIM Zandhuisen for record clearance and pay for all time lost
account unwarranted thirty (30) days suspension from ser-
vice effective October 21, 1982, to and including November
19, 1982, for alleged violation of Rule 702A of the
Consolidated Code of Operating Rules on October 12, 1982."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant herein was a brakeman assigned to the Extra Brakeman's List at Great Falls, Montana. At approximately 3:00 A.M. on October 12, 1982, a need for extra brakeman arose and claimant was first out and rested for service. The crew caller at Havre put out calls to the three numbers listed for claimant without being able to reach him. Subsequently, claimant was cited for an investigation and was found guilty of failure to be available for a call on the particular day.

Petitioner takes the position that claimant complied with Carrier's Rule 702A in every respect. There was merely a misunderstanding between the claimant and the crew dispatcher and no willful neglect on the part of claimant. Obviously, an incorrect number was listed at Havre and this, according to the Organization, was caused by a mistake made in movement of the crew calling operation to that city a short time before the incident herein. In addition to this position, the Organization argues that the conducting officer's refusal to permit thorough cross-examination of a witness by claimant's representative constituted a fatal flaw in this proceeding.

Carrier argues that claimant was aware of his obligation to notify the crew caller if he was unavailable to receive calls at his home phone or his paging device. In this instance he did not do so, according to Carrier. Carrier argues that the transcript of the investigation contains ample support for the conclusion that claimant did not comply with Rule 702 and thus was guilty of the transgression. For that reason, it was apparent, according to the Carrier, that claimant should have been disciplined and the thirty day discipline was commensurate with the violation.

The Board finds that there was a fatal flaw in the investigation of this matter. The investigating officer did not permit cross-examination of its key witness to the extent desired by claimant's representative. This was improper and, in fact, could indeed have precluded the most important evidence from the claimant's point of view from being introduced. However, the Board has no knowledge of what this testimony might have been and, therefore, the lack of due process accorded to claimant is sufficient to overturn the conclusion reached by Carrier. We cannot reach the merits and the claim must be sustained.

AWARD

Claim sustained.

ORDER

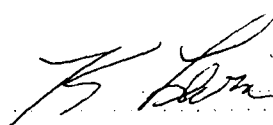
Carrier will comply with the award herein within thirty (30) days from the date hereof.



V. M. Lieberman, Neutral-Chairman



Wendell Bell, Carrier Member



K. Levin, Employee Member