

PUBLIC LAW BOARD NO. 3741
AWARD NO. 129

UTU Case No. 52240/610
Carrier No. 4-(87-1495)
Docket No. 138

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION (C&T)

AND

CSX TRANSPORTATION, INC. (FORMER B&O RAILROAD CO.)

STATEMENT OF CLAIM:

"Request of Trainman R. A. Horton (10094) for the removal of the Discipline entry from his service record, ten (10) days overhead suspension, pay for all time lost in connection therewith. Date of Incident: March 6, 1986.

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, 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 is a road train service employee assigned in pool freight service between Baltimore, Maryland and Philadelphia, Pennsylvania with home terminal at Baltimore.

The Claimant had incurred a telephone bill in the amount of \$70.07 for use of Philadelphia Centre Hotel's telephone in conducting personal business. The Claimant failed to timely dispose of the personal obligation, and the Hotel contacted Carrier officials in an effort to get the bill paid and settle the matter. As a result, Trainmaster W. C. Benson issued instructions for the Claimant to take care of the bill immediately and if he felt the charges for use of the telephone were not

legitimate, to contact the Hotel in order to avoid further involvement between the Hotel and the Carrier. The delivery receipt of the letter notifying Mr. Horton to take care of the telephone bill was noted to have been received by Mr. Horton on February 25, 1986. However, on the 20th of March, the Carrier officers were notified by the Hotel that the outstanding bill owed by Mr. Horton had not been paid.

The Claimant was charged with failure to comply with the Trainmaster's instructions. As a result of the investigation the Claimant was found guilty as charged. As discipline therefor, he was assessed ten (10) days overhead suspension.

The Organization contends that the Claimant's contractual rights of due process have been violated in two respects. Firstly, the Organization objects to the Carrier's use of a recording device as not being in compliance with Agreement Rule 17 governing Discipline and Grievances. Secondly it objects to the Carrier's failure to provide a copy of the transcript of the hearing to the Claimant or his representative.

The Carrier contends that the Claimant was accorded a fair and impartial investigation and was properly found to be culpable of the charges. It asserts that there were no procedural errors which would warrant setting the discipline aside.

Schedule Agreement Rule 17(e) states in pertinent part:

"e) Stenographic report will be taken of all hearings held under this rule and the employee involved or his representative shall be furnished with a copy of same

The Board finds that the mere use of a tape recorder rather than a stenographer to record the hearing is not a valid basis for overturning the Carrier's action where a stenographic report is then prepared and

furnished to the Claimant or his representative.

In the instant claim however, the Carrier's failure to provide a copy of the transcript violates the Agreement and warrants the Board's setting aside the Carrier's action. The Claimant or his representative has an unqualified right under the Agreement to a copy of the transcript irrespective of the merits of his claim. The Carrier may not unilaterally conclude that it need not bother to provide a copy of the transcript to the Claimant or his representative on its own judgment as to the likelihood or unlikelihood of his being able to prevail in a subsequent claim.

Accordingly, the Board will sustain this claim.

AWARD:

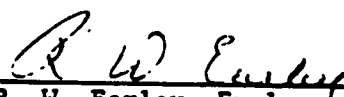
The claim is sustained.

ORDER:


The Carrier is directed to comply with this Award within thirty (30) days of its issuance as shown below.



L. F. Kell, Carrier Member



R. W. Earley, Employee Member



Jack Warshaw, Chairman
and Neutral Member

JUN 27 1988

Bethesda, MD