

Public Law Board No. 3975

Parties to Dispute

Railroad Yardmasters of America	)	
	)	Case No. 1
vs	)	
	)	Award No. 1
Baltimore and Ohio Railroad	)	

STATEMENT OF CLAIM:

Yardmaster W. F. Lewis, Buffalo, N.Y., be compensated 29 days pay at the yardmaster pro rata rate of pay for dates March 22, 1984 through and including April 19, 1984 for Carrier's failure to comply with the provision of Article 22(b) of the yardmaster Agreement.

OPINION OF THE BOARD

By letter of February 23, 1984 Claimant W. F. Lewis was charged with possible responsibility in being absent without permission from his work assignment. Following an investigation the Claimant was notified by letter of March 20, 1984 that he had been found guilty and was assessed a twenty-nine (29) days actual suspension.

By certified letter of May 3, 1984, the Regional Chairman made a claim for compensation based solely upon a procedural issue with no arguments pertaining to the merits of the case. According to the Organization, Article 22(b) of the Agreement was violated in that the Carrier failed to copy the Regional Chairman with the decision it expressed to the Claimant in its March 20th

letter of discipline. Rule 22(b) states as follows:

"ARTICLE 22 DISCIPLINE

(b) A decision shall be rendered within twenty (20) days after completion of investigation, with copy to the Regional Chairman."

The Organization maintained in its May 3rd letter that it had never been "advised in writing of any discipline" assessed against the Claimant. In its response of June 1, 1984 the Carrier acknowledged both the "clerical oversight" and its correction of the oversight by receipt of a certified copy on May 9, 1984.

Focusing on the central issue Article 22(b), the Organization contends that the Agreement mandates a "copy to the Regional Chairman" within twenty (20) days after completion of the investigation. It notes that the copy was furnished, only after a procedural claim was filed, on these same grounds, and sixty-three (63) days after the investigation. The Organization further points out that awards and previously settled claims on this same property, over this same issue, have already so ruled, raising the issue of stare decisis.

The Carrier's response to the awards and letters of settlement cited on the property is that they are clearly distinguishable from the case at bar. It argues that in past cases a central issue was the denial of the Claimant's rights to

prepare a defense by lack of transcript or notice. In the instant case, Claimant was given a written decision within twenty (20) days. Both the Claimant and Organization were provided a copy of the transcript. Most critical and distinguishing in the instant case is that the Regional Chairman was aware of the decision within two days after the letter was issued. This fact is substantiated by the Carrier and not disputed by the Organization. In all, the Carrier maintains, that even if a minor technical oversight did occur, it did not deny the Claimant his rights to prepare an appeal, nor overcome the Claimant's guilt in the merits of the case. In its letter of January 11, 1985, Carrier insists that in these particular circumstances it was in compliance with the Agreement.

This Board has carefully reviewed the central issue at bar and the numerous awards cited by both parties. The Agreement states a "copy" must be sent. The record indicates the Carrier has failed to "copy" the Regional Chairman within the twenty (20) days. This Board is being asked to set aside discipline for a major offense on a technical detail. While it is always reluctant to do so, it is not constituted to add intent to an agreement between the parties. It must rule therefore, with the Organization and in consistency with past Awards and settlements on this same property (Fourth Division Award 4211 and the settlement letter of September 6, 1979; case 2-YG-156).

As such, this Board finds no Agreement support for the position of the Carrier that a verbal notification is an acceptable substitute for a written copy. The Claimant was denied his rights under the Agreement. The fact that the knowledge of the discipline was obtained by the Regional Chairman from other sources is not controlling. It is a well established principle of contract interpretation that Agreement provisions which are clear and unambiguous must be complied with by both parties. In the instant case, the Carrier failed in its obligations to provide the Regional Chairman with the discipline decision in written form. We are therefore constrained to uphold the Agreement. We have no authority nor discretion to redefine, reconstruct, or construe the clear and unambiguous language of Article 22(b) which calls for a "copy" into some other meaning. The Agreement was violated by a procedural oversight.

In view of the above, we find Carrier in error and direct the Claimant be made whole for actual wage loss at his pro rata rate of pay on these grounds alone. Petitioner raised other procedural issues during the appeal on property which, though relevant, will not be discussed in view of our primary determination and aforementioned conclusions. In violating Rule 22(b) the Carrier has made a critical error in procedure and as such the Claim must be sustained.

FINDINGS

Public Law Board No. 3975 upon the whole record and all the evidence finds that:

The Carrier and the Employee involved in this dispute are respectfully Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

That the Agreement has been violated.

AWARD

Claim sustained as set out in the Opinion of the Board.

Marty E. Zusman  
Marty E. Zusman, Chairman  
Neutral Member

Robert C. Arthur  
Robert C. Arthur  
Employee Member

Earl F. Norton  
Earl F. Norton  
Carrier Member

Date: 1/3/86