

Public Law Board No. 3975

Parties to Dispute:

Railroad Yardmasters of America)	
)	Case No. 2
vs)	
)	Award No. 2
Baltimore and Ohio Railroad)	

STATEMENT OF CLAIM:

"Claim on behalf of former Yardmaster W. F. Lewis, Buffalo, New York for one days pay at the Yardmaster pro rata rate of pay, for date of June 20, 1984, for attending Carrier investigation and one days pay at the Yardmaster pro rata rate of pay for date of June 21, 1984 and every day thereafter until Mr. Lewis is restored to service with all seniority rights and all other rights under all local and National Agreements in addition claiming all wages he would have earned through working overtime and/or doubling and holiday losses. Also any amount incurred for medical or surgical expenses for himself or dependents to the extent that such payments would have been paid by Travelers Insurance Company under the applicable group policy. In the event of the death of Mr. Lewis pay his estate the amount of Life Insurance provided under the provisions of the Yardmaster' Supplemental Life Insurance program. In addition, reimbursement for any premium payments he may have to make in the purchase of substitute life insurance. Also request that Mr. Lewis be promptly restored to duty with vacation and all other rights unimpaired and his service record be cleared of all charges and discipline or reference thereof."

OPINION OF THE BOARD

This is a companion case to Case No. 1 of Public Law Board No. 3975 and involves the same Claimant. In the instant case the

Public Law Board No. 3975 (Case No. 2, Award No. 2)

/2

Claimant received notice dated June 5, 1984 that he was charged with:

"responsibility in connection with being absent without permission from your assignment as Yardmaster from approximately 5:15 AM until 7:01 AM the scheduled end of your tour of duty, on June 5, 1984 at Buffalo Creek Yard, Buffalo, New York."

After postponement, a hearing was held on June 20, 1984 and following the hearing the Claimant, Yardmaster Lewis, was dismissed from the service of the Carrier on June 21, 1984. The letter of dismissal found Claimant guilty in pertinent part:

"for being absent without permission from your assignment from approximately 5:15 A.M. until 7:01 A.M., the scheduled end of your tour of duty on June 5, 1984 in violation of Rules P, 1400, and 1401..."

The Organization appealed this case on both procedural grounds and on merits. The major procedural issue was that the Carrier violated the Agreement in not appraising the Claimant and Organization of the precise charge, as required. Specifically, the Organization maintains that the Claimant was not charged with a violation of these Rules for which he was found guilty. As the Organization put it:

"It is obvious from the wording of the charges that a violation of Rules P, 1400 and 1401 was not intended or even thought of by suggestion in the case. It is

equally obvious that Lewis could not properly prepare his case for lack of notice as to just what the hearing was all about."

The Organization substantiates its argument by pointing to countless awards of various divisions of the National Railroad Adjustment Board and "find(s) that Fourth Division Award No. 3489 is on "all fours" with the issue involved here" and between the same parties. In addition to the issue of whether Claimant received a precise charge, the Organization also points to numerous procedural objections with the hearing including bias, failure to admit relevant evidence, failure to allow the Claimant to face his accuser, and failure to develop all the facts.

The Carrier maintains that the Claimant was provided a fair and impartial hearing in accordance with Article 22 of the Agreement. Further, the Carrier maintained that the "charge against Mr. Lewis was specific, giving him ample opportunity to prepare his defense." It is argued that the Claimant received his full rights under the Agreement including precise charges. As for the addition of Rules P, 1400 and 1401 in the notification of discipline the Carrier officer notes that:

"The inclusion of Operating Rules in the findings is not uncommon in this industry and merely served to highlight violations involved with Claimant's offense."

The Board has carefully reviewed each of the procedural issues raised as well as the numerous Awards cited. We find that the Claimant received a precise statement of the charges (see Fourth Division Award 2378). While the notice did not list the Rules violated, it most certainly stated absent without permission, identical words utilized in Rule P. Both Rules 1400 and 1401 are clearly related to the charge of being absent without permission in that they require yardmasters to receive instruction from the Trainmaster (Rule 1400) and to be responsible for the efficient operation of the yards (Rule 1401). There is nothing in the Agreement requiring that the Rules themselves be specified (Public Law Board 2486, Award 3, Case 3). As such, given the case at bar, this Board does not agree that Fourth Division Award 3489 is on "all fours" with these circumstances. In that Award, unlike this case, the discipline included guilt for a Rule G violation which had never been suggested in the charges. In the instant case, the charges clearly allowed the Claimant to prepare an informed and adequate defense. The statement of charges in the instant case were neither procedurally defective nor at significant variance with the discipline statement.

With respect to the numerous other procedural issues raised, this Board has carefully reviewed each of the contentions and

finds that none were sufficient to deprive the Claimant of his contractual rights in accordance with Article 22 of the Agreement. As such, finding that the procedural arguments are not controlling, we turn to a consideration of the merits of the case.

The record indicates that Claimant by his own admission left his assignment and responsibilities without the permission or knowledge of the Trainmaster. As Yardmaster on duty he was responsible for the efficient operation of the yards, but released his yard crew approximately two and one-half hours early and left the yards without proper authority to do so. Claimant admittedly did not contact Trainmaster Snow prior to his departure. The record contains evidence, including that of General Car Foreman Sharp and fellow Yardmaster DiLorenzo that Claimant left his assignment in violation of normal procedures and without leaving a record to that effect in the log book or elsewhere. The Carrier's findings of fact are supported throughout the transcript.

A continuing point is raised by the Organization over the Claimant's illness. This Board does not see that as particularly relevant. Sickness is not appropriate justification for abandoning assignment and dismissing a crew without receiving proper permission or leaving an appropriate record. Although

Claimant called prior to his relieving time, this does not negate the violation. The Carrier has clearly met its burden of proof in the instant case. The record before the Board contains substantial and credible evidence to warrant conclusion that Claimant is guilty as charged.

Under these circumstances, and considering the serious offense for which the Claimant is guilty, we are most reluctant to interfere with the Carrier's assessed discipline of dismissal. In the Claimant's supervisory position the Carrier has every right to expect that he will carefully adhere to the employment obligations to which he has been entrusted. Dismissal under the circumstances at bar is justified if past discipline has not produced corrective behavior. We note however, that Carrier's discipline in this matter was predicated in part on a companion case from which the discipline has been nullified (PLB 3975; Award No. 1). This Board has held on numerous occasions in prior awards that discipline should be progressive and corrective (Second Division Award 6485; Third Division Awards 5372; 19037 inter alia).

As such, we are constrained to remove the dismissal allowing Claimant to return to service with seniority rights and benefits unimpaired. All other elements of the Claim with regard to this Award including claims for wages, clearing of record and

reimbursements are denied. Claimant was clearly guilty of the charges.

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.

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