

PUBLIC LAW BOARD No. 4525

PARTIES) UNITED TRANSPORTATION UNION
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TO)
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DISPUTE) SOO LINE RAILROAD

STATEMENT OF CLAIM:

"We the Yardmaster Department of the United Transportation Union hereby appeal from the decision of Mr. D. J. Lyons, Superintendent-Terminal and Road Operations, Soo Line Railroad Company, dated June 25, 1987 imposing discipline by dismissal from the service of the Soo Line Railroad of Mr. Bernhardt L. Larsen, Yardmaster, and we make claim that Mr. Larsen be reinstated to service on the Soo Line Railroad, that his record be cleared of this decision, and he be paid for all time lost including all vacation and Holiday pay beginning on June 13, 1987 the day Mr. Larson was held out of service prior to being afforded a "fair and impartial" hearing, as a result of this decision.

STATEMENT OF FACTS:

On June 15, 1987 the Carrier directed the following notice to the Claimant:

"Formal investigation/hearing will be conducted at 10:00 a.m., Wednesday, June 17, 1987 in room 201, Muskego Yard, Milwaukee, Wisconsin to determine all facts and circumstances and to place responsibility, if any, in connection with your alleged failure to comply with instructions issued by Trainmaster A. L. Fletcher, your allegedly being insubordinate and quarrelsome with Trainmaster A. L. Fletcher, your alleged failure to avoid altercation with employees to whom you are required to report, your alleged failure to handle trains and engines expeditiously to avoid unnecessary delays on June 13, 1987 at approximately 7:30 a.m. You are being withheld from service pending investigation. You are entitled to a representative of your choice present at this investigation/hearing as is provided for in your schedule rules. Please arrange to be present on the date and at the time specified."

After a postponement, the investigation was held on June 19, 1987. Subsequently, the Claimant was dismissed.

FINDINGS:

The Board finds, after hearing upon the whole record and all evidence, 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 and it has jurisdiction of the Parties and the subject matter, and that the Parties were given due notice of the hearing held.

At the outset, the Board notes that the Organization raised a number of procedural objections. The only one which warrants any serious consideration is their contention that the multiplicity of roles played by Terminal Superintendent D. J. Lyons denied the Claimant due process. However, upon close examination even this is ultimately not a basis to overturn the discipline. While Mr. Lyons did give testimony and while the discipline letter was signed by him, we note the Carrier explained to the General Chairman that this was merely a formality and that the hearing officer actually reviewed the transcript and made the recommendation to discharge the Claimant. In view of this fact we are satisfied that the Claimant received the independent consideration he is entitled to as part of fair hearing guaranteed by Article 19.

Turning to the merits, the Board notes that the testimony of Mr. Fletcher and Mr. Larson conflicts on almost all significant points. This brings to mind our proper role. It is not our role as an appellate body to resolve conflicts or to weigh the evidence. This function is reserved to the hearing officer and we must defer to his findings of fact, if they are supported by substantial evidence.

The hearing officer resolved these conflicts in favor of Mr. Fletcher and there is no basis in this record to justify overturning his findings as to credibility. Indeed there is substantial evidence to support the charges, particularly the portion of the charges relating to the Claimant being insubordinate and quarrelsome. The hearing officer found that Mr. Fletcher credibly testified that Mr. Larson profanely questioned Fletcher's instructions, hung up the phone on him, later refused to converse with him and interfered with Fletcher's efforts to direct a yard crew. Insubordination is broadly defined as any action taken by an employee which impedes management's ability to direct the work force. The transcript definitely bears out the fact that Mr. Larson was in the general sense of the word "insubordinate" as well as quarrelsome.

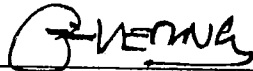
The remaining question is whether, based on the facts, discharge is the appropriate penalty. It is our conclusion that clearly it is not. The most significant mitigating factors are the conduct of Mr. Fletcher and the Claimant's 37 plus years of service. Mr. Fletcher, like Mr. Larson, is no angel and did provoke to some degree the Claimant's reactions, which, while

improper, were in the general scheme of things, a mild -- as opposed to gross -- form of insubordination.

Accordingly, a significant suspension would have been in order. If it were not for the Claimant's horrible past record we might have concluded that less than a 120-day suspension would be the appropriate penalty. However, given all the circumstances including his past record and the fact that the Claimant, a supervisor himself, should know better than to be uncooperative. We will uphold a 120 day suspension.

AWARD

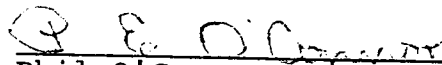
The Carrier is ordered to reinstate the Claimant, with seniority and other rights unimpaired, to change his record to reflect a 120-day suspension instead of a dismissal and to pay him for all time lost beyond the 120-day suspension.



Gil Vernon
Chairman and Neutral Member



T. P. Turner
Employee Member



Phil O'Connor
Carrier Member

Dated this 2nd day of August, 1988
at Eau Claire, Wisconsin.