

PLB No. 5157

Indicative of this prejudgment was the testimony of the Carrier officer who accused the Claimant of violating General Rules "M" and "P", and then immediately suspended him before the commencement of a formal inquiry. Such damaging testimony, together with the hearing officer's perceived bias, was discussed in the interim decision and requires no further elaboration. It bears repeating, however, that the manifestation of prejudgmental determination in this case deprived the Claimant of his fundamental right to due process. This right, embracing the elements of fairness and impartiality, was compromised here by glaring procedural irregularities. By reason thereof, there were ample grounds for vacating the Claimant's tainted discharge and reinstating him to service.

In light of the foregoing explanatory review of the Board's December 9, 1991 ruling, the interim award is hereby affirmed.



Charles P. Fischbach
Chairman and Neutral Member

Dated at Chicago, Illinois,
this 12th day of February, 1992

PARTIES
TO
DISPUTE

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS
and
UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM

Claim is made for and in behalf of Swtichman M. D. Barton, for reinstatement to the service with full seniority rights unimpaired, including pay for, all time lost, Vacation Pay, Separation and Quadweekly Allowance's, any and all arbitrary & fringe benefits, reimbursement of any monetary loss of medical, surgical, life and dental benefits, attending the investigation and removal of all unfavorable discipline entry from Claimant's service record as a result of an investigation held on April 15, 1991.

FINDINGS AND OPINION

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted under Public Law 89-456 and has jurisdiction over the parties and dispute involved herein; and that the parties were given due notice of the hearing thereon.

Since this dispute involves a discharge case which has been unresolved for a period of time, the neutral member of the Board deems it necessary to render an interim, albeit binding, decision and award. The findings herein shall be more fully discussed in a subsequent explanatory opinion.

Prior to his employment termination, Claimant was employed by the Carrier as a switchman. He also served as the Organization's part-time General Chairman on the Carrier's property. On April 5, 1991, the Carrier's General Manager notified the Claimant in writing that he was being removed from service pending the outcome of a formal investigation relative to his purported violation of General Rules "M" and "P" when he "gave testimony in the Circuit Court, Third Judicial Circuit, Madison County, Illinois, on April 2, 1991." The investigation was held on April 15, 1991, and as a result thereof, the Claimant was found guilty as charged and

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dismissed from service, effective April 16, 1991. Subsequent appeals by the Organization contesting this disciplinary action were of no avail. The dispute over the Claimant's discharge was then submitted to this Board for final adjudication.

A thorough review of the case record reveals that the Carrier committed egregious procedural errors during the investigatory process which culminated in the Claimant's employment termination. The manifestation of these errors abridged his fundamental rights to due process.

In the first instance, the notice of investigation was defective because the Carrier failed to properly apprise the Claimant of his so-called infraction in the manner prescribed by Article 31(b) of the Agreement and past practice on the property. Even though this procedural defect may have been remedied when the hearing was rescheduled at the request of the Claimant, the notice itself was lacking in specificity since it did not "convey a full and clear statement of the complaint or charges" in context with the cited rules which the Claimant was accused of infringing. This material flaw was further compounded by the Carrier's contravention of Article 31(c), as amended, when the General Manager, who issued the instant notice, simultaneously withheld the Claimant from service before the complaint against him was formally addressed at the scheduled investigation. As perceived by this officer, the nature of the alleged offense which prompted such summary action was linked to certain testimony the Claimant gave at a court proceeding where he divulged having received compensation when asked by various law firms to testify and/or consult on F.E.L.A. Lawsuits pending against the Carrier. The extent of this compensated activity, which occurred while the Claimant was off-duty, did not warrant his removal from service prior to the Carrier ascertaining whether such extracurricular conduct was violative of its rules.

Suffice it to say, the situation here cannot be viewed as a major offense which constituted a clear and present danger to life or property impelling the Claimant's immediate suspension. The Carrier erred when removing the Claimant from service pending the outcome of the investigation. Such precipitous action gave rise to the presumption that there was a compelling reason to find him guilty as charged. Adding credence to this presumption is the testimony of the General Manager, which points up his preconceived notion of the Claimant's guilt upon having discovered the services he rendered for pay on behalf of injured employees in litigation involving the Carrier. The General Manager stated unequivocally

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that he found this conduct to be "a definite conflict of interest between a Terminal employee and the company's rules." (Investigation Transcript, p.8) Although it was this very officer who preferred the basic charge against the Claimant, he had already determined, by his own admission, that the accused violated Rules M" and "P". In the same vein, it is significant to note that the General Manager's revealing testimony was elicited in response to a question the hearing officer asked of this witness which was unduly suggestive of the answer to the core issue of the investigation. The manner in which this particular question was propounded also reflected a bias toward the Claimant on the part of the hearing officer.

In light of the foregoing findings, the referenced display of prejudgmental determination irreparably impaired the Claimant's right to a fair and impartial hearing which is an integral component of the discipline rule - "the keystone of employee contractual protection." Special Board of Adjustment No. 100, Award No. 408 (Seidenberg, 1987). Without reaching the merits of the case, the procedural irregularities mentioned herein provide sufficient grounds for vacating the Carrier's decision to discharge the Claimant. This disciplinary action shall now be set aside and expunged from his employment record. Further, the Carrier shall reinstate the Claimant to his position and service with pay for time lost, including the full restoration of his seniority and vacation rights and other entitled benefits. In computing lost pay, the Claimant, as a protected employee, shall be entitled to any and all quadweekly allowance's he would have otherwise received during the period of his discharge. Such payments shall be made retroactive to the date of termination up to the date of his reinstatement to duty.

AWARD

Claim sustained.

ORDER

The Carrier shall comply with this Award immediately upon receipt thereof.



Charles P. Fischbach
Chairman and Neutral Member



R. P. Mathewson, Carrier Member



C. L. Little, Employee Member

Dated at Granite City, Illinois,
this 9th day of December, 1991.