

PUBLIC LAW BOARD NO. 5529

PARTIES	UNITED TRANSPORTATION UNION-	)	
	YARDMASTERS DEPARTMENT	)	
		)	AWARD NO. 5
TO	AND	)	
		)	CASE NO. 5
DISPUTE	CSX TRANSPORTATION, INC.	)	
	(FORMER BALTIMORE & OHIO	)	
	RAILROAD COMPANY)	)	

STATEMENT OF CLAIM:

Continuous claim for regular Yardmaster L. C. Deery, who was working out of Wilmington, Delaware, who was dismissed from the service of the Carrier August 20, 1993. This dismissal was discipline that was issued from a hearing that was held August 3, 1993, in Wilmington, Delaware. This claim demands that the claimant immediately be returned to work as a Yardmaster and to be paid for all time lost including any overtime and or holiday pay he would have made. This claim also demands that any mention of this matter be stricken from the claimant's record. This claim commences on or about July 13, 1993, when the Carrier removed the claimant from service pending this investigation. (Carrier file 11-93-0026)

HISTORY OF DISPUTE:

In July 1993 Claimant held the position of Second Shift Yardmaster at the Carrier's yard at Wilmington, Delaware. On July 12 Claimant had a brief conversation with the Terminal Manager during which the question of whether Claimant could leave his shift early the following day and have another employee work the remainder of his shift was discussed. Their versions of that portion of the conversation conflict.

On July 13 Claimant left his shift early and an extra Yardmaster, at Claimant's request and arrangement, worked the

remainder of Claimant's shift. Subsequently, during the shift, the Assistant Trainmaster, who previously had warned Claimant verbally and in writing not to leave his shift and substitute another employee to work it without obtaining permission from him or from the Terminal Manager, discovered that Claimant had left his shift and had arranged for the extra Yardmaster to work the remainder of it. He removed Claimant from service effective July 14.

By letter of July 14, 1993 the Carrier notified Claimant to appear for formal investigation on the charge of insubordination in connection with his actions the previous day. The investigation was held on August 3, 1993. By letter of August 20, 1993 the Carrier notified Claimant that he had been found guilty of the charge and was dismissed from the Carrier's service effective immediately.

The Organization grieved the discipline. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151, et seq. The Board also finds it has jurisdiction to decide

the dispute in this case. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.

At the outset the Organization raises a number of procedural objections to the investigation one of which is that the Hearing Officer failed to resolve conflicts in testimony between Claimant and the Terminal Manager concerning whether during their conversation on July 12 Claimant had obtained that officer's permission to leave his shift early on July 13 and to arrange for another employee to work the remainder of the shift in his place. The Organization argues that the Hearing Officer's failure in this regard denied Claimant a fair and impartial investigation.

Award No. 3 of Public Law Board No. 5046, Apr. 16, 1993, (Mason, Neutral), between the same parties and interpreting the same agreement, set aside the discipline in that case in part because the Hearing Officer failed to render an opinion to the Carrier as to the credibility of witnesses who gave conflicting testimony at the investigation. Clearly, Award No. 3 stands as an interpretation of the applicable schedule agreement concerning the obligations of a Hearing Officer conducting an investigation on this property. We believe the Hearing Officer's failure in this case to make a credibility determination or to render an opinion as to credibility with respect to the conflicting testimony of Claimant and the Terminal Manager as to their July 12, 1993 conversation renders this case indistinguishable from Award No. 3.


There has been no argument here, nor is there probative evidence, that the award is patently erroneous. Accordingly, we find no basis upon which to disregard or depart from the holding of the award.


In view of the foregoing we are constrained to set aside the discipline in this case.


AWARD

Claim sustained to the extent of the relief requested in the claim, except that, as provided in Article 22(d) of the applicable schedule agreement, Claimant shall be ". . . compensated for the difference between the amount he would have earned in service and the amount he earned from outside employment during the period he was out of service."

The Carrier will make this award effective within thirty days of the date hereof.

  
William E. Fredenberger, Jr.  
Chairman and Neutral Member

  
W. E. Griffin, Jr.  
Carrier Member

  
R. P. DeGenova  
Employee Member

DATED: 10/10/94