

PUBLIC LAW BOARD NO. 6076

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION))	
(YARDMASTERS DEPARTMENT))	
)	NMB CASE NO. 18
VS)	AWARD NO. 18
)	
CSX TRANSPORTATION, INC.)	

STATEMENT OF CLAIM:

Claim is made for Yardmaster B. J. Brinson that the five (5) day overhead suspension, and any and all references to this incident be stricken from Yardmaster Brinson's personal file. Furthermore, I make claim for eight (8) hours pay for Yardmaster Brinson for June 24, 2002, the day of the investigation.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved. The parties to this dispute were duly notified of hearing thereon.

Claimant was summoned to a formal investigation in connection with an alleged incident of his "involvement of an automobile accident in Winston Yard, milepost AY 856, Sunday, June 16, 2002 at approximately 2030 hours, and your alleged failure to comply with instructions and damage to company property, while working as Yardmaster, and all circumstances related thereto." Following the investigation Carrier found that claimant "did not comply with Rule 501(4) careless operation of vehicle," and assessed a 5 day overhead suspension from service.

In its presentation to this Board the Organization has argued that claimant was denied his right to a fair and impartial investigation in that the notice failed to set forth a "precise charge" as required by Article 21(a) of the parties agreement.

This Board has had the opportunity to thoroughly review the transcript of investigation, together with all other documents submitted by the parties, and notes that Article 21(a) reads in part as follows:

"(a) Yardmasters shall not be disciplined, disqualified subsequent to their being qualified, or dismissed without a fair and impartial hearing before a proper officer. Such employee shall be apprised in writing of the precise charge against him ***."

As noted above, claimant was notified to report for investigation in connection with his involvement in an automobile accident as well as his alleged failure to comply with instructions and damage to company property.

While this Board finds that those portions of the notice of investigation concerning claimant's "involvement in an automobile accident" and "damage to company property" meet the requirement of "precise charge," the Board finds that the charge of "failure to comply with instructions" is not precise and, therefore, not in compliance with the rule.

The investigation was held on June 24, 2002, and the Conducting Officer was District Superintendent C. E. Young. Under date of July 19, 2002, a letter was addressed to claimant by Director of Train Operations D. A. Jones (a Carrier Officer who was not in attendance at the investigation) with the decision that claimant "did not comply with Rule 501(4) careless operation of vehicle."

In our review of the record the Board cannot find that claimant was charged with "careless operation of vehicle" nor can we find any evidence which would support this Carrier finding. In fact, the only witness to the accident provided a written statement to Carrier stating, "I think Brinson did everything in his power to control his vehicle." Carrier made no effort to have this witness attend the investigation, therefore, his written statement stands uncontested.

Based on the record in its entirety it must be the decision of this Board that Carrier has failed in its burden to offer substantial evidence that claimant was guilty of violating Rule 501(4), consequently the imposition of a 5 day overhead suspension was improper and must be removed from claimant's record. Claimant is entitled to compensation for June 24, 2002, the day of the investigation.

AWARD

Claim disposed of as set forth in the above findings. Carrier is instructed to comply with this Award within thirty days of the date hereof.

SR Friedman - dissent
S. R. Friedman, Carrier Member

J. R. Cumby
J. R. Cumby, Employee Member

F. T. Lynch
F. T. Lynch, Neutral Chairman

Award date JAN. 15, 2004