

PUBLIC LAW BOARD NO. 6076

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION)	)	
(YARDMASTERS DEPARTMENT)	)	
	)	NMB CASE NO. 19
VS	)	AWARD NO. 19
	)	
CSX TRANSPORTATION, INC.	)	

STATEMENT OF CLAIM:

Claim is made for Yardmaster B. J. Brinson be reinstated and that he be credited for all lost Railroad Retirement credits, vacation credits and that he be made whole (to include any and all lost overtime). Also any and all references to this incident be stricken from Mr. Brinson's personal file. Furthermore I make claim for eight (8) hours pay for August 12, 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 on a charge of "conduct unbecoming an employee as a result of statements made during the course of an investigation held on June 24, 2002." Following the investigation Carrier found claimant guilty of the charge against him and dismissed him from service.

This Board has had the opportunity to thoroughly review the transcript of investigation, together with all other documents submitted by the parties, and we are dismayed by the actions of Carrier Officers involved in this matter.

The Board will note that the instant dispute is in reality a continuation of the dispute involved in our prior Award No. 18. The evidence provided in the hearing involving this same claimant in the previous dispute clearly failed to prove that claimant was guilty of the charge of "failure to comply with instructions." The second hearing, made basis for this dispute, appears to be nothing more than an effort by claimant's immediate supervisor to renew the charge by now alleging claimant's conduct at the first investigation was "unbecoming;" that is, having failed to prove his case against claimant in the first case, claimant's immediate

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supervisor now wishes a second bite of the apple by endeavoring to prove claimant was guilty of allegedly making certain statements during the first investigation.

The Board will note that claimant's immediate supervisor was in attendance and testified at the first investigation. This supervisor was also a principle witness at the second investigation here involved.

It is the opinion of this Board that if there was a dispute over the testimony given at the first investigation, it was the responsibility of the Hearing Officer to endeavor to resolve the dispute. His failure to do so and the setting of a second investigation with a different Hearing Officer and a further witness, who was not produced at the first investigation, cannot be held to be proper procedure.

In its presentation to this Board the Organization has alleged that claimant was not afforded the fair and impartial investigation guaranteed him by Article 21 of the parties agreement. Based on the record here before us, this Board is inclined to agree with this Organization allegation.

The Organization has also argued that the second investigation was not timely held; that is, such investigation was not held within the 15 day period set forth in Article 21. The first investigation was held on June 24, 2002. The second investigation was scheduled to be held on July 22, 2002, well beyond the 15 day period set forth in the rule. This Board, therefore, is inclined to agree with the position taken by the Organization that the second investigation was not timely held.

Based on our finding that the second investigation was not timely held, this Board must rule that Carrier's action in dismissing claimant from service was improper and the notation must be removed from his service record. The Board also finds that claimant is entitled to compensation for attending the investigation held on August 12, 2002.

It must be noted that the claim in this dispute, as set forth in the Statement of Claim above, is that claimant be reinstated and made whole for time lost. Carrier has informed this Board that claimant actually resigned from his Yardmaster position in July of 2002 and returned to service as a Locomotive Engineer; that is, prior to Carrier's decision of August 17, 2002, dismissing claimant from service. In addition, Carrier has also advised this Board that claimant suffered an on-duty injury prior to Carrier's action dismissing him from service, and states claimant has performed no service for CSXT since that injury occurred. The Organization has not disputed Carrier's statements, therefore, it does not appear

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from the record before us that claimant has lost any time as a result of Carrier's erroneous decision to dismiss him from service. Inasmuch as the findings of this Board are that Carrier erred in its decision to dismiss claimant, claimant must be permitted to return to service if and when he sufficiently recovers from his injury.

As a matter for this record, the Board must note that the Hearing Officer in the second investigation here involved was Carrier's Engineer Administration; therefore, it was his responsibility to rule on any question(s) of credibility of the testimony of the witnesses. The ultimate decision to dismiss claimant from service was made by Carrier's Chief Operating Officer C. D. McBride, an individual who was not in attendance during the investigation and one who was in no position to rule on the credibility of the testimony of the witnesses. Incidentally, the record reveals that Mr. McBride was personally involved in a joint meeting with claimant prior to the first investigation, consequently he would not qualify as an impartial officer capable of rendering the final decision following the second investigation.

Carrier has failed in its burden to provide substantial evidence that claimant was guilty of the charge against him. In the event claimant's name was removed from the Engineer's seniority roster, his seniority date must be promptly restored.

AWARD

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

  
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F. T. Lynch, Neutral Chairman

  
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S. R. Friedman, Carrier Member

  
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J. R. Cumby, Employee Member

Award date JAN. 15, 2004