

PUBLIC LAW BOARD NO. 6632

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION)	
YARDMASTERS DEPARTMENT)	
) NMB CASE NO. 2
VS)	AWARD NO. 2
)
KANSAS CITY SOUTHERN Rwy CO)	

STATEMENT OF CLAIM:

Claim is made for Claimant Bill Huston for one days pay at the current rate for September 26, 2002 and each day thereafter until claimant is permitted to exercise his contractual rights as a yardmaster, with all other rights and benefits unimpaired with his record cleared of all charges.

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 in this dispute was summoned to a formal investigation on the following charges:

- "1. Your alleged improper use of company electronic mail;
2. Your alleged inappropriate behavior;
3. Your alleged failure to devote yourself to your duties; and
4. Your alleged display of dishonest and immoral conduct when you transmitted pornographic, sexually explicit and/or other unacceptable material via KCS electronic equipment."

Following the investigation Carrier's Investigating Officer notified claimant, by letter dated October 7, 2002, that the charges against him were proven and that he was being dismissed from service.

For this record the Board should note that claimant was first employed in May, 1997, as a Switchman. He was thereafter promoted to Conductor, Yardmaster, Assistant Trainmaster, Trainmaster, Terminal Director and to the position of Terminal Superintendent. He was occupying the position of Terminal Superintendent when he was summoned to the investigation here involved.

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In its presentation to this Board the Organization has argued that Carrier committed various procedural errors of sufficient magnitude to justify a ruling that claimant should be returned to active service as requested in the Statement of Claim set forth above. The alleged procedural errors were:

- "1. Organization Representatives were arbitrarily denied information requested in writing, well in advance of the start of the investigation.
2. Prejudice of Hearing Officer.
3. Hearing Officer refused to rule on 'credibility determinations'.
4. Principle representative from Organization did not receive a copy of Investigation Transcript.
5. Time limit violation on discipline notice."

This Board has considered each of the alleged procedural errors as set forth above and finds as follows:

There is no rule in existence between the parties requiring Carrier to provide the requested information in advance of the hearing.

A thorough review of the hearing transcript fails to reveal any evidence that the Hearing Officer was "prejudiced" in any manner.

The Hearing Officer may have refused to act on the Organization's request for a "credibility determination" when the Organization requested he do so during the investigation, nevertheless he did ultimately make such determination when he rendered his decision following the investigation; that is, his decision finding claimant guilty was tantamount to deciding he placed more credence in the testimony of Carrier's witness and certainly this Board is not in a position to set such finding aside.

There is nothing in the record before this Board that could lead to a determination that failure of Carrier to provide a copy of the transcript to one of claimant's representatives was detrimental to claimant's interest or in any way affected his rights to properly appeal the dismissal decision.

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With respect to the alleged time limit violation, the record is clear that investigation was held on October 2, 2002 and the decision was rendered on October 7, 2002; that is, within the 5 days specified in the governing rule.

Based upon our review, the Board must find that there is not sufficient merit to the Organization's alleged procedural errors to justify a finding which would set aside Carrier's decision in this dispute.

In addition to the above the hearing transcript makes it explicitly clear that claimant admitted he sent the pornographic and sexually explicit photographs involved (and there were many) via his Company computer, his only excuse being he received the material from others, including his supervisors. Based on his admission alone, it must be held that Carrier has produced the substantial evidence necessary to justify its decision that claimant was guilty of the charges against him.

In mounting claimant's defense, the Organization argued that claimant was never made aware of the rules prohibiting use of the company equipment for other than company business; however, as noted above, claimant was holding the position of Terminal Superintendent at the time this incident occurred. This Board believes that as an officer of the company it was his responsibility to be aware of company policy and we are unable to hold that "ignorance of the specific rule" can be held to be a sufficient excuse to justify his reprehensible actions.

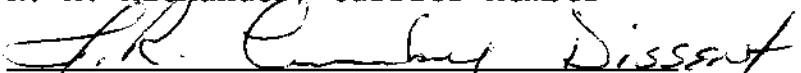
Upon our review of the record in its entirety, the Board must find that Carrier acted well within its authority in its determination that claimant was guilty of the charges against him. Carrier's decision to dismiss claimant from service must be upheld in that there is nothing in the record before this Board to justify an attempt to interfere with such decision.

AWARD

Claim denied.


F. T. Lynch, Neutral Chairman

K. A. Alexander, Carrier Member


J. R. Cumby, Employee Member

Award date _____