

PUBLIC LAW BOARD NO. 4901

AWARD NO. 70
CASE NO. 70

PARTIES TO
THE DISPUTE: United Transportation Union (CT&Y)

vs.

Atchison, Topeka and Santa Fe Railway
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

DATE: August 1, 1996

STATEMENT OF CLAIM:

Request in behalf of Los Angeles Division Conductor D. A. Gill for reinstatement to the service of The Atchison, Topeka and Santa Fe Railway Company, Coast Lines, with seniority and all other rights unimpaired and with pay for all time lost including the payment of Health and Welfare Benefits beginning on November 8, 1993, and continuing until returned to service.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

On November 8, 1993, Carrier's Assistant Superintendent for Operations detected the odor of alcohol on Claimant's breath shortly after Claimant reported on duty. Carrier's official was trained in the detection of alcohol usage. During the ensuing discussion, Claimant admitted consuming alcohol approximately six hours before his report time. Carrier officials did not observe Claimant to display any evidence of impairment at the time. When offered a blood test, Claimant declined. He was removed from service and Claimant complied without protest.

The investigation was originally scheduled to be held November 18, 1993. The Organization requested and was granted two postponements. During the investigation held January 18, 1994, Claimant admitted that he had violated the Rule G prohibition against drinking when subject to duty.

It is undisputed that Claimant previously violated Rule G in 1990. Carrier's drug and alcohol policy provides for the disciplinary penalty of discharge for repeat violations within a ten year period.

The Organization challenged the Carrier's action on several grounds. Substantively, the Organization said Claimant was denied a fair and impartial investigation in that Claimant's guilt was pre-judged. In addition, it asserted that Carrier failed to prove a Rule G violation. Procedurally, the Organization alleged Carrier failed to provide Claimant with timely written notice of the investigation. Following the investigation, the Organization contended Carrier failed to provide Claimant with written notice of its decision within the 30-day time limit established by Article 13(d). According to the Organization, either of the procedural violations required a default decision in favor of Claimant pursuant to Article 13(g)(6).

After careful review of the record, the Board finds that the substantive challenges lack merit. In addition to the other evidence of improper consumption, the transcript of investigation shows that Claimant admitted the Rule G violation. It cannot be successfully maintained, therefore, that Claimant was pre-judged or that Carrier failed to prove the violation.

Concerning the Organization's first procedural challenge, it is noted that Article 13(b) does not impose a specific time limit for giving an employee written notice of an investigation. It requires only that the notice be in writing and that it be given sufficiently in advance to afford the employee a reasonable opportunity to prepare for the investigation. On this record, Carrier mailed the original notice on November 11, 1993 for an investigation to be held on November 18, 1993. Both of these dates were well within the 30-day time limit for conducting the investigation. The letter shows it was sent via certified mail. It was properly addressed and requested a return receipt. Claimant denied receiving the letter.

Numerous Public Law Board awards have held that the notice requirement is satisfied by mailing to the proper address regardless of actual receipt. In this case, however, Claimant's representative twice requested and was granted postponements of the investigation. Carrier issued timely written notices of each of the two postponements.

Claimant admitted he received both of these notices. Under these circumstances, this alleged notice violation must be rejected.


For its second procedural challenge, the Organization says Carrier failed to issue a written notice of its disciplinary decision within 30 days of the completion of the investigation. Although Carrier's written decision was dated January 20, 1994 and postage metered for February 2, 1994, the mailing envelope shows a postal service over stamping with the date of February 24, 1994. Carrier, however, maintains that both Claimant and his representative were verbally informed of the decision by the hearing officer at the conclusion of the investigation. This verbal notification is undisputed.

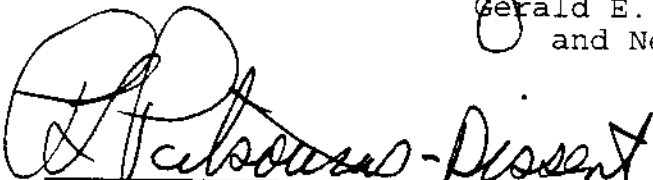
While Article 13(b) explicitly states "When a formal investigation is to be held the employe shall be given written notice ..." of the investigation, Article 13(d) does not contain a similar requirement that Carrier's disciplinary decision be in writing. It says only that "A train service employe disciplined as a result of formal investigation shall be informed of that fact within thirty (30) days after the investigation is completed ..." (Underlining supplied) Since Claimant and his representative were verbally informed within the time limit, this challenge must also be rejected.

As a result of the foregoing reasons, the Board finds that the Claim must be denied.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


P. L. Patsouras,
Organization Member


Milton H. Siegele, Jr.,
Carrier Member

Dated this 1st day of August, 1996 in St. Paul, Minnesota.