

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25041
Docket No. 44788
99-1-98-1-U-2060

The First Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Union Pacific Transportation Company (former CNW)

STATEMENT OF CLAIM:

“Claim in behalf of Utility Brakeman T. A. Keller, SS# 327-38-4407, Union Pacific Railroad former Chicago and North Western Railroad, for compensation for all lost time including time spent at the investigation, that this incident be removed from claimant’s personal record, he be removed from the Union Pacific Discipline System known as Upgrade, and that he be reimbursed for any and all medical expenses incurred during his suspension when he was investigated on the following charge:

‘claimed unauthorized overtime on the dates of January 23, \ and 24, 1998 while you were working as Yard Helper on job UT-61 starting at 0759 A.M. on the above mentioned dates.’”

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant T. A. Keeler was regularly assigned to a Yard job starting at 07:59 A.M. This was an eight-hour assignment; he was to go off duty at 3:59 P.M. On January 22, a Company official noticed that Claimant's time record indicated that he went off duty at 7:52 P.M. The Carrier official observed Claimant leaving the property prior to 7:52 P.M. A similar observation took place on January 23rd. Claimant reported going off duty at 7:53 P.M., but was observed leaving the property prior to 4:30 P.M. On January 26, 1998, Claimant was directed to appear for a formal investigation for stealing time. The notice of hearing specified January 27 and 24, 1998, as the dates Claimant stole time, rather than January 22 and 23, the days he actually left the property early. A hearing in the matter was held on February 6, 1998. Claimant was found guilty as charged and dismissed from Carrier's service.

The Organization is protesting the discipline assessed Claimant on a procedural basis. It does not defend Claimant on the merits of the dispute.

The Organization contends that UTU Rule 23(d) and (f) were not complied with by Carrier in the handling of this case on the property. UTU Rules pertinent to this case read as follows:

UTU Rule 23(d) states:

"23.(d) Yardmen or switchtenders taken out of service or censured for cause shall be notified by the Company of the reason therefor and shall be given a hearing within five days after being taken out of service. If held longer shall be paid for all time so held at their regular rates of pay."

In UTU Rule 23(f) states:

"23.(f) Decision shall be rendered in writing within three days after the hearing, or yardman or switchtender will be paid for all time lost after expiration of the three days."

In raising Rule 23(d) and (f) as the basis for its claim, the Organization is contending the following:

1. The investigation was held on February 6, 1998. The discipline notice was dated February 25 and was received by Claimant on February 27, 1998.

That is twenty-one days beyond the date of the investigation.

2. Rule 23(f) allows a three-day period in which discipline can be rendered.
3. Eighteen days elapsed after the three-day period Carrier had to assess discipline.
4. Since the Carrier did not assess a discipline three days after the close of the hearing, it is barred from assessing any discipline and Claimant must be reinstated with all backpay and benefits. The Organization cites numerous awards to support its position.

This Board has carefully reviewed the record of this case and has taken special note of the UTU Rules applicable to this case, as well as the numerous awards submitted by the Organization to support its claim. As a result of that review, the Board concludes as follows:

Rule 23(d) cited above does not have an impact on this case as finally presented, since there is no claim by the Organization that the hearing was not scheduled in a timely manner.

The Organization, however, contends that Rule 23(f) was not adhered to by the Carrier and consequently Carrier cannot impose discipline in this instance. This Board finds the Organization's interpretation of Rule 23(f) to be tortured and not in keeping with labor relations common sense. Rule 23(f) clearly states that if discipline is not rendered within three days after the investigation is completed, then Claimant will be paid for all time lost after the three days. That phrase can only be read to mean that if it takes Carrier more than three days to render a decision, the Claimant must be paid for time lost awaiting the decision after those three days. It does not state or imply that if the Carrier does not assess the discipline within the three days, no discipline can be assessed. If that were what the parties to the Agreement intended to say, it could have easily been so stated.

None of the awards cited by the Union contain the language applied in this case, but some do contain more restrictive language that states or implies that if the Carrier does not assess discipline within a certain time period, it may be barred from doing so. That is not the case here.

The facts, however, do indicate that Carrier is obligated to pay Claimant for all work days lost between February 9, 1998, and February 27, 1998. That is what Rule 23(f) dictates.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division**

Dated at Chicago, Illinois, this 27th day of July 1999.