

AWARD NO. 8  
Case No. 8  
SU-1774

PUBLIC LAW BOARD NO. 1198

PARTIES) SOUTHERN PACIFIC TRANSPORTATION COMPANY (T&L LINES)  
          )  
TO        )  
          )  
DISPUTE) UNITED TRANSPORTATION UNION (S)

STATEMENT OF CLAIM: Claim for all time lost by Switchman H. W. Muller, New Orleans Terminal, June 17, 1973 until such time as claimant is reinstated with unimpaired seniority, vacation and all other rights; also claim is made for reimbursement for all monies paid to Travelers Insurance Company by claimant for the purpose of maintaining Health & Welfare coverage under Group Policy GA-23000.

FINDINGS: This Public Law Board No. 1198 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was charged with:

"Being indifferent to duty, vicious and for wilful disregard affecting the interest of the Company when you removed the back plate of Handie Talkie radios issued to you, Avondale, Louisiana, and placing foreign matter in the radios thereby making them inoperative and beyond repair and for being insubordinate on June 16, 1973 to Terminal Superintendent when you left his office after being instructed by him to remain which may be in violation of Rules 801 and 804 of Rules and Regulations of the Transportation Department."

Evidence of record indicates that the officer who prepared the wording of this charge was the officer who made the decision that claimant was guilty. The Organization contends that the Carrier's charge constituted a presumption of guilt.

With this contention, the Board must agree, for the Carrier charged the claimant with being indifferent to duty and then stated "when" he had removed the back plate of the Handie Talkie radios issued to him. In other words, the officer who worded the charge and made the decision assumed or presumed that the claimant had removed the back plate. The charge should have stated that he was being indifferent to duty by removing the back plate, or that he was charged with removing the back plate, and that such constituted being indifferent to duty.

In other words the claimant should be charged with the act or acts which constitute a violation of the Operating Rules. This is a question of fact which must be resolved by proof. Whether or not such act or acts does constitute a violation requires an interpretation of the rules of the Carrier. In this instance the fact which the company set out to prove, i.e., that the claimant had destroyed the radios, was presumed to have been fact in the charge itself.

The Board has examined all of the evidence of record and finds that there was sufficient evidence for the Carrier to make a reasonable and just finding that the claimant had destroyed the radios. However many awards of the First Division and Public Law Boards have held that the claimant is entitled to a fair and just trial. These Boards have held that prejudice is a violation of the Agreement between the Union and the Company.

Under these circumstances the Board is obligated to find that the claimant is entitled to be reinstated with seniority and all other rights unimpaired and pay for time lost. It is therefore the finding of this Board that claimant be reinstated with seniority and all other rights unimpaired and pay for time lost.



The Board notes that the Carrier contends that the outside earnings of the claimant should be deducted from this award. In the absence of a rule which authorizes the deduction of outside earnings or a practice on the property of deduction of outside earnings, the Board finds that the deduction of outside earnings is not justified.

AWARD: Claim sustained as per above.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.

  
Preston J. Moore, Chairman

  
J. P. Perkins, Organization Member

  
R. Cunningham, Carrier Member  


Houston, Texas  
January 28, 1974