

PUBLIC LAW BOARD NO. 5719

INTERPRETATION OF AWARD NO. 40

Award No. 40 of PLB No. 5719 was signed by the Board on April 29, 1997. Under date of June 3, 1997, the Organization petitioned the Board for an Interpretation as follows:

"Reference Award No. 40 of Public Law Board 5719 wherein you reinstated Engineer V. J. Christianson without back pay.

"It has come to this Organization's attention the Carrier is reinstating Student Engineer V. J. Christianson back to service with a Level 4 of the UPGRADE Discipline Policy. It is the position of this Organization, after reviewing your award that Student Engineer Christianson should be returned to service at the level he was at previous to this incident.

"In talking with Mr. Gonzales this date, he stated that since Award No. 40 reinstated Engineer Christianson without back pay, it was the Carrier's policy that they would be returned to service at a Level 4. The Organization strongly disagrees with this position and therefore, it is our request that you give a formal interpretation of your award as to whether or not, Engineer V. J. Christianson should be returned to service at the level he previously was before the incident in question that was handled by Case No. 40 of Public Law Board 5719. Please advise."

This request for an interpretation was made in accordance with the provisions of Section 7 of the agreement establishing this Public Law Board, such section reading in part:

"In case a dispute arises involving an interpretation of an award while the Board is in existence or upon recall within sixty (60) days thereafter, the Board, upon request of either party, shall interpret the award in light of the dispute."

Carrier was offered the opportunity to reply to the Organization's request and it was subsequently agreed the matter would be discussed in an Executive Session of the Board. For various reasons the Board did not meet in Executive Session until December 18, 1997, at which time, having been unable to resolve the dispute, Carrier was granted the opportunity to submit a written reply which was received on February 20, 1998. The Organization replied thereto under date of March 6, 1998.

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It is the position of the Organization that when claimant was restored to service by virtue of Award No. 40, his discipline record should have returned to the level in effect prior to the incident involved; that is, Level 0.

Carrier has argued that prior to a 1998 modification of the UPGRADE Discipline Policy it had been the practice to view a commutation from dismissal to time served as reducing the employee's Level 5 discipline status to a Level 4. The 1998 modification of the UPGRADE Discipline Policy now provides that such a Level 5 will be reduced to Level 3, unless the employee's prior status was at Level 4.

We will note for the record that the practice to which Carrier alludes was not reduced to writing and was not made a part of the UPGRADE Discipline Policy distributed to the employees prior to the 1998 modification; i.e., while it may have been a practice, it was a practice known only to Carrier--it was not a practice of which the employees or their representatives were aware.

In its written reply to the Organization's request for an Interpretation of Award No. 40 Carrier has taken the position that it "correctly reduced the Level 5 to a Level 4 consistent with its application of the UPGRADE Discipline Policy as it existed at that time. Therefore, the claimant's Level 4 status is not a matter that falls within the Board's jurisdiction in Executive Session."

The Board does not agree with this Carrier assessment in that the dispute concerning claimant was submitted to the Board by agreement between the Carrier and the Organization; therefore, when the adopted award did not address the question of Level of discipline, the Organization was certainly within its rights to seek an interpretation. The question concerning which Level of discipline would remain on claimant's record was neither discussed nor referred to when the dispute was originally presented.

When the decision was made to return claimant to active service without pay for time lost, the Organization believed his discipline Level would revert to that in effect prior to the incident. Carrier instead applied the alleged practice and reduced claimant's discipline from Level 5 to Level 4.

It is the ruling of this Board that the issue of a proper discipline record for this claimant, following his restoration to active service is an issue that is properly before the Board and is an issue which must be resolved.

Claimant Christianson was dismissed from service by letter dated October 2, 1996, and he was restored to service following adoption of Award No. 40 on April 29, 1997, therefore, he was out

of service for an appreciable amount of time as a result of the incident for which he was charged. Inasmuch as this Board believed claimant was somehow involved in the incident, it was the decision to not grant him any pay for time lost. That being the case, we cannot agree with the Organization's position that his discipline level should have reverted to Level 0. His discipline record must reflect a proper level if claimant is to be afforded the opportunity to learn from his mistake and guard against future detrimental actions.

At the same time the Board does not agree that Carrier acted properly in merely reducing the Level 5 to a Level 4 based on an alleged practice which had not been made known or available to the employees.

A proper disposition of this issue would be to return claimant to service at Discipline Level 3 without prejudice to the UPGRADE Discipline Policy as it existed prior to the 1998 modifications, and it is so ordered. Carrier will make the necessary correction in claimant's discipline record.

  
F. T. Lynch, Chairman and Neutral  
Member

Date of Interpretation April 9, 1998