

Case No. 43 Award No. 43

STATEMENT OF CLAIM:

FINDINGS: The dismissal of the Claimant arose because of events which took place on March 1, 1997. On that date, the north main track switch at Callahan, Texas had not been properly lined and locked. This resulted in a train leaving the main line, going into a siding for approximately twelve (12) car lengths. No derailment or injuries resulted because of the incident.

The Claimant was found guilty of violating Rules 8.3 and 1.6 and he was assessed a Level 5 discipline.

The course of the disciplinary proceedings is under the control and direction of the Carrier. The language of the Parties' Agreement, when it addresses matters related to the Employer/Employee relationship, makes it clear that the notion of fairness is fundamental to that relationship. Indeed, for example, the Discipline Rule provides that an employee "will not be discipline without first being given a fair and impartial investigation." This provision advances the basic principle that the Carrier will deal with its employees in an impartial fashion in accordance with the commonly accepted standards of fairness.

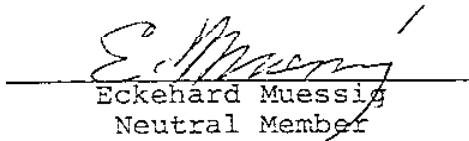
One of the requirements for a fair and impartial hearing is to take all reasonable steps necessary to establish relevant facts. In this case, both the Conductor and the Claimant, repeatedly testified that a third party, Conductor Courbier, assumed responsibility for the "north switch." Both Union representatives repeatedly asked to have Conductor Courbier present to testify. Clearly, Conductor Courbier could have offered relevant testimony. The failure of the Hearing Officer to call Conductor Courbier also lends further substance to the Organization's claim of pre-judgment.

In summary, while the Board is not unmindful of the Carrier's position in its brief and in its arguments before the Board at this hearing, these arguments cannot overcome the on the property proceedings that did not meet the standards of fairness and impartiality. The parties contracted to provide the employee the right to a fair and impartial trial before any disciplinary action could be taken. If that procedural safeguard can be circumvented by the kind of hearing process used here, the Parties' contract would have little substance. For any disciplinary action to have a legitimate foundation, a "fair" and "impartial" trial, as provided by the Agreement, must occur.

AWARD

The claim is sustained.


Jim McCoy
Organization Member


ECKEHARD MUESSIG
Neutral Member


C. J. Andrews
Carrier Member

Dated: 8/20/98