

Case No. 1 Award No. 1

STATEMENT OF CLAIM

November 27, 1995. The Trainmaster, Mr. Jack Lisle ("Lisle"), responded to the Claimant. Lisle stated that the Claimant on November 9, 1995 had been sent to relieve another crew. Lisle further stated that the Claimant was told that five handbrakes had been applied to the train. However, according to Lisle, the Claimant moved the train about eight miles and failed to release the handbrakes. This caused considerable damage to the wheels of five cars. Lisle further claims in the letter that "these facts" were discussed with the Claimant at the Claimant's request on November 9, that three other Carrier employees were present during that discussion and that his "past reprimand record was discussed." This record shows discipline was administered on October 4 and 18, 1995.

February 27, 1997. On this date, the Organization's former General Chairman filed a detailed appeal on behalf of the Claimant. The appeal focuses on the following major points:

1. The Claimant was dismissed without an investigation.
2. The Claimant had not been provided sufficient training by the Carrier.
3. The two prior incidents, that led to reprimand or a warning notice to the Claimant had mitigating elements that were not given proper weight by the Carrier.
4. The Carrier erred in not holding an investigation concerning the incident of November 9, 1995. Had it done so, the facts would show that the Claimant was not at fault to the degree suggested by the Carrier.

May 1, 1997. Counsel for the Carrier denied the Organization's appeal of February 27, 1997 mainly for the following reasons:

1. The Claimant was not represented by the Organization at the time he was discharged and, indeed, was an "at will" employee who could be dismissed without cause by the Carrier.
2. Without prejudice to its basic position, the Carrier provided its substantive reasons in detail that the Claimant's failure to properly perform his duties was a major violation of the Carrier's Operating Rules. Therefore, a proper basis to separate the Claimant had been established.

The Board finds that the claim must be denied. The Claimant was an "at will" employee. The Carrier's Personnel Policy Manual, applicable at the time of the Claimant's employment in pertinent part provided:

The purpose of this Manual is to outline the current policies of Eastern Idaho Railroad. This Manual is not an employment contract, and Eastern Idaho Railroad reserves the absolute right to change or modify any or all of its policies without notice to any employee. Notwithstanding anything to the contrary in this Manual, Eastern Idaho Railroad shall have the right to terminate any employee at the will of Eastern Idaho Railroad, with or without cause.

The language noted above is clear and unambiguous. Moreover, because of the Claimant's "at will" status, the Carrier's actions here is also supported by a holding of the Supreme Court of the State of Idaho, in Michell v. Zilog, Inc., 129 Idaho 709, 874P.2d 520 (1994) when it held:

it is settled law in Idaho that, unless an employee is hired pursuant to a contract which specifies the duration of the employment or limits the reasons for which an employee may be discharged, the employment is at the will of either party. Either party may terminate the relationship at any time for any reason without incurring liability.

Therefore, the only remaining question before the Board is what rights the Claimant has pursuant to the Parties' April 3, 1996 Agreement. This Agreement was not retroactive. The former General Chairman, during the on-the-property handling of the case, provided no evidence that the Agreement provided retroactive rights to the Claimant at the time when he was dismissed.

For all of the foregoing, the claim is denied without addressing the merits.

AWARD

The claim is denied.

G. A. DeBecker
Carrier Member

Schepard Muessig
Eckehard Muessig
Neutral Member

Jim May I Dissent
Organization Member

Dated: APRIL 6, 1998