

The Fourth Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (United Transportation Union - Yardmasters Department  
(CSX Transportation (former Nashville Terminal)

STATEMENT OF CLAIM:

Claim is for Yardmaster C. M. Fuqua for 60 days pay at the Yardmaster rate of pay and to clear his record of charges and discipline assessed as result of investigation held May 8, 1987.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

As a result of an investigation held on May 8, 1987 Claimant was notified by letter dated May 19, 1987 that he was suspended for 60 days. This suspension is appealed to this Board on the merits of the matter as well as with a contention that several procedural violations occurred when this matter was being handled on the property.

Of the several procedural issues raised by the Organization we note that Rule 6 (b) contains a sentence reading:

"Within five (5) days after the investigation closes (the investigation is not considered closed until after the official receives approval of the department head), the proper officer shall render a decision and advise the accused in writing of the penalty imposed."

The last sentence in the official transcript of the May 8, 1987 investigation reads:

"The record will show this investigation closed at 12:55 PM."

The decision assessing discipline was dated May 19, 1987. The interval between May 8 and May 19 obviously exceeded the five day period allowed in the Rule. Accordingly, when Carrier did not render its decision assessing discipline within the time limits provided in the Rule it forfeited its right to do so.

In its brief and before this Board Carrier has argued that Claimant's right to appeal was not in any manner prejudiced by the delay in the assessment of discipline. The language of the time constraints provided within paragraph (b), supra, as well as those in paragraph (c), under which an employee taking an appeal must do so within 15 days, are not conditioned on whether decisions or appeals made out of time would be prejudicial. The parties that drafted the Rule did not see fit to excuse each other in non-prejudicial circumstances. We cannot do it for them.

The claim will be sustained without consideration of the merits of the discipline.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1988.