

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13914
Docket No. 13791
07-2-06-2-1

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

(Brotherhood of Railway Carmen Division of TCU
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company, Inc.

STATEMENT OF CLAIM:

- "1. That the Delaware & Hudson Railway Company (Division of CP Rail System) violated the terms of our current Agreement in particular Rule 26.1, 27.7, and 27.12, when they arbitrarily charged Local Chairman D. P. Fancher and Carman J. A. Gardner for violating NORAC Rule(s), as defined in SAN No. 3-97 dated February 8, 2002, for submission of time claims dated January 19, 2004, File Nos. DF2-04 and DF3-04.**
- 2. That accordingly, the Delaware & Hudson Railway Company be ordered to remove from the Claimants discipline record the discipline of a Formal Caution as provided in Form 104 dated April 13, 2004 for violation of the above mentioned rule."**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On January 29, 2004, Carrier notified Claimants to appear for a formal Investigation which was postponed and then subsequently held on March 26, 2004 concerning the following charge:

"The purpose of this investigation hearing will be to determine your responsibility, if any, for your alleged violations of NORAC Rules D as defined in SAN notice number 3-97 dated February 8, 2002, for the submission of time claims dated January 19, 2004, file numbers DF2-04 and DF3-04 after submission of pay into the payroll system by Mr. Gardner for January 17, 2004 on January 19, 2004."

On April 13, 2004, both Claimants were notified that they had been found guilty of all charges and were assessed a Formal Caution.

It is the Carrier's position that the Local Chairman (Claimant Fancher) improperly submitted a time claim in behalf of one of his members (Claimant Gardner) based upon mere speculation that Carrier violated the Agreement and without any investigative due diligence as to its merits. According to it, both Claimants hoped to gain an inappropriate double payment for Gardner. The Carrier argues that this is not an attempt by it to stop the Organization from submitting claims, but rather a corrective measure to insure that the Organization does its fundamental investigation on whether a claim should be submitted at all, which according to it in this instance should not have been done.

It is the Organization's position that there was no reason to hold the Investigation nor did the Carrier prove any impropriety. According to it, the time claims were submitted in compliance with the Agreement and without any intent to defraud the Carrier. The Local Chairman was doing his job to protect his member, who also had no knowledge of his representative's actions, therefore, it requests that the Formal Cautions be removed from both Claimant's personnel record.

The Board has thoroughly reviewed the record and is not persuaded by the Carrier's arguments as to why it called for the instant Investigation. It has no right to call for an Investigation on the basis it does not believe the Organization has done enough investigative work before filing a claim nor does it have any right to discipline the Local Chairman or his member. The Carrier has the mechanism in the grievance handling provisions of the Agreement to guard against frivolous claims. It merely has to deny the claim. The Railway Labor Act gives the

Organization an unfettered right to represent its members without interference or intimidation. Contrary to the Carrier's argument the record is clear that it used the disciplinary provisions of the Agreement to send a message to the Local Chairman and his member to watch out if you submit a time claim. The Carrier's coloration of its motives do not change the fact that it improperly interfered with the Organization's right in this instance to represent its members. The Board finds and holds that the discipline was arbitrary and capricious and is rescinded by removing the Formal Caution from both Claimants' personnel records.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 6th day of August 2007.