

Award No. 6123
Docket No. 5985
2-BN(CB&Q)-EW-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)

BURLINGTON NORTHERN, INC.
(Formerly Chicago, Burlington & Quincy Railroad Company)

DISPUTE: CLAIM OF EMPLOYEES:

1. That in violation of the current Agreement, Division Lineman M. E. Bartley was unjustly suspended on August 2, 1969 and arbitrarily dismissed from the service of the Carrier on August 26, 1969.

2. That accordingly, the carrier be ordered to restore the aforementioned Division Lineman to service with all benefits, rights, privileges and seniority unimpaired and that he be compensated for all time lost subsequent to August 2, 1969.

EMPLOYEES' STATEMENT OF FACTS: Division Lineman M. E. Bartley, hereinafter referred to as the claimant, was employed by the Burlington Northern, Inc. (formerly Chicago, Burlington and Quincy Railroad Company), hereinafter referred to as the carrier, in carrier's communication department. Division linemen are employees assigned to maintain communications equipment and lines on a district in accord with paragraph B(1) of Rule 34 and claimant's assigned headquarters point was located at Edgemont, South Dakota.

On August 1, 1969, Special Agent E. E. Cole, Road Foreman of Engineer F. K. Tomlin and Claim Agent R. E. Ryder observed the claimant working on carrier's communication lines about one mile south of Pringle, S. D. These carrier officials stopped their car at this location at approximately 3:15 P. M. that day and interviewed the claimant. They questioned him about his activities on the day of July 31, 1969, the evening of July 31, 1969 and the morning of August 1, 1969.

Under date of August 2, 1969, carrier sent claimant a telegram instructing him to attend an investigation in carrier's depot at Edgemont, S. D. at 10:30 A. M., August 7, 1969. Carrier stated the purpose of the investigation was claimant's alleged use of intoxicants while subject to duty and unauthorized use of company vehicle and transporting unauthorized persons therein at

Following the claimant's dismissal from service, claim for his reinstatement with restoration of all rights and privileges and wages lost was appealed by General Chairman W. J. Peck, first to Superintendent of Communications Wigton, and then to General Manager J. E. Hamer, who is the highest designated officer of the Carrier in discipline matters in the territory involved.

It will be readily apparent from the General Chairman's appeal that he recognizes the claimant's guilt, but bases his claim for reinstatement upon alleged errors in procedure and interpretation, and a rather surprising opinion that the circumstances justified transporting an unauthorized person in his company vehicle.

In the first place, the general chairman refers to the portion of Rule 25(c) reading: "The notice must specify the charge for which the investigation is being held", and contends that an employe cannot be disciplined for rule violation unless the specific rule number is included in the notice to appear. Such unrealistic contention can hardly hope to prevail. Rule 25(c) does not require the citation of specific rules, and the notice to appear in this case (quoted in Carrier's Statement of Facts) outlined the charge in language that could not possibly be misunderstood.

In dealing with the question of proper notice, the various divisions of the Adjustment Board have universally held to the principle that the charge must be specific enough to apprise the individual of the subject matter to be investigated, and that the omission of specific rule number does not constitute prejudicial error. See Third Division Awards 11783, 12255, 13953, 14021, 14123, 15025, 16115, 16121 and 16816 for examples of awards holding to this principle. The direct and clearly understandable language of the charge in the case presently before us met every possible criterion as to sufficiency.

In his appeal of the claim the general chairman also attempted to place a restrictive interpretation on the clear and unambiguous language of Rule "G" and limits its application to employes on duty. The rule contains no such restriction or reservation, and the claimant admitted its violation. Moreover, at Page 9 of the investigation transcript the claimant admitted that he was subject to call at all times in the event his services were required.

The general chairman's attempt to excuse the claimant's action in transporting an authorized person in his company vehicle expresses a completely unrealistic position deserving of little consideration. The meaning and intent of Rule 8 of the Rules and Instructions for Operating Highway Vehicles is clearly expressed. It would be difficult to conceive a more flagrant violation of the rule than that before us here, when an employe admittedly spent six hours in a tavern, consuming at least five or six beers, and then transporting an intoxicated woman in his truck in the middle of the night.

In summarizing, the argument and evidence herein and herewith submitted adequately support the carrier's opening contention that the claimant was guilty of serious violation of important rules and that such violation, when considered in the light of his previous unsatisfactory record, amply justified his dismissal. The claim for reinstatement with restoration of rights and privileges and pay for time lost should therefore be denied.

FINDINGS: The Second 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 employe 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.

This is a discipline case and as such the burden of proof is upon the Carrier. The record supports the Carrier's action in the instant case. Claimant was afforded a fair and impartial hearing. The charges are supported by substantial evidence and the discipline imposed is reasonable. Accordingly, we will not upset the punishment decided upon by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1971.