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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6382
Docket No. 6240
2-AT&SF-EW-'72

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (System Federation No. 97, Railway Employees'
(Department. A. F. of L. - C. I. O.
((Electrical Workers)
(
(The Atchison, Topeka and Santa Fe Railway Company
(- Eastern Lines -

Dispute: Claim of Employees:

1. That the Carrier erred and violated the contractual rights of Mr. John Klamerus when they removed him from service as a result of an investigation held on September 10, 1970.
2. That said investigation was improper and illegal.
3. That, therefore, Mr. Klamerus be restored to service with all rights, privileges and benefits unimpaired and that he be compensated for all lost wages and/or other rights and benefits.

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 employees 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.

Claimant has worked for this carrier as an electrician since August 1949. Under the Brown System of "Discipline by Record", he was subject to dismissal when he accumulated sixty demerits. A hearing was held, "to determine the facts concerning your personal record being assessed with an excessive accumulation of demerits." Claimant was dismissed after the hearing, in September 1970, "account violation of Rule 38, General Rules for the Guidance of Employees, Form 2626 Std., Revised 1966."

The Organization took the position that claimant was improperly dismissed because a fair hearing was not conducted. This is based on the carrier's refusal to comply with the Organization's request for, "a copy of all documents that will be introduced at the investigation; a list of all witnesses who will be called; and a physical description of any other evidence that will be presented.", to be provided in advance of the hearing.

As to this position, carrier was not required to furnish the information requested. The notice of the hearing complied completely with the requirements of Rule 33 $\frac{1}{2}$ of the Agreement. The Organization's statement that the requested information has been given in other instances is not supported by any evidence upon which a claim of past practice could be established. The record of the hearing demonstrates that the request, if granted, would have not made any difference. There were no witnesses at the hearing. The only physical evidence introduced consisted of letters to the claimant setting forth violations for which he was assessed demerits. Receipt of each of these was acknowledged by claimant in writing on each letter as well as his written notation that he waived formal investigation. In addition, claimant was advised by the hearing officer that he could check the records and that they would be brought to the hearing. Claimant did not ask that this be done. At the conclusion of the hearing, claimant's representative could add only that another chance be given to claimant now that he knew the seriousness of the situation.

The Organization also took the position that the Brown system "subjected" claimant to dismissal but did not "require" it; that other employees under the same circumstances were not subjected to hearings or dismissed.

As to this, no evidence was offered to establish a practice in other cases. Carrier denied that others were treated differently. Whether or not claimant should have been dismissed under a rule which subjects him to dismissal goes to the merits and justification for the dismissal.

The Brown System of Discipline by Record goes back to 1923. It was tested and fully discussed in Second Division Award No. 1820. That Award found that under the system a claimant is always aware of his status and at a formal hearing has the opportunity to double check this record. This Division held that dismissal based on this system may be upheld.

In this case, the record of the hearing shows that claimant acknowledged receipt each time that he received the notice of his violations and of the demerits. In addition, the record shows that he also acknowledged receipt of a letter warning him that there were fifty demerits against him and alerted him to improve. Nevertheless, claimant went on to where at one time there were eighty demerits on his record.

There is no room for discussion of the equities or the exercise of discretion as to the degree of penalty. Claimant was properly advised of the hearing and the purpose. He had received notices each time demerits were assessed and each time he waived the opportunity to protest. He had fair warning. He was properly represented at the hearing. In these circumstances, under this Rule the penalty was not arbitrary and we may not substitute our own judgment.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1972.