

(Advance copy. The usual printed copies will be sent later.)

(Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6525
Docket No. 6398
2-HB&T-CM -'73

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Houston Belt & Terminal Railway Company

Dispute: Claim of Employees:

1. That the Houston Belt & Terminal Railway Company violated the Agreement of September 1, 1949, particularly Rule 29, when they unjustly dismissed Car Inspector J. M. Bowles from their service effective May 1, 1972.
2. That accordingly, the Houston Belt & Terminal Railway Company be ordered to compensate Car Inspector Bowles as follows:
 - a) Eight hours (8') per day, five (5) days per week beginning May 1, 1972;
 - b) Returned to service with seniority rights unimpaired.
 - c) Made whole for all vacation rights;
 - d) Made whole for all health and welfare and insurance benefits;
 - e) Made whole for pension benefits including Railroad Retirement and Unemployment Insurance;
 - f) Made whole for any other benefits that he would have earned during the time he was held out of service.

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 hereon.

Claimant was found guilty of removing certain equipment from the property of the Carrier without proper authority and dismissed from service.

The Organization alleges that the dismissal was unjust for the reasons that 1) Claimant did not receive a fair and impartial hearing under rule 29 and 2) there was not sufficient evidence adduced to support the charge.

"Rule 29
DISCIPLINE AND COMMITTEE

"No employee shall be disciplined without a fair hearing by designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be re-instated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal."

The alleged violation of rule 29 is based on lack of precision in the charge and a defect in order of testimony.

The notice of investigation reads as follows:

"
Report to the Superintendent's Office, Room 203 Union Station, Houston Belt and Terminal Railway Company at 1 P.M., Friday, May 5, 1972, for formal investigation to develop facts and place responsibility, if any, in connection with the charge that you removed property, namely household vacuum cleaners and or attachments, without proper authority from the property of the Houston Belt and Terminal Railway Company on or about March 30, 1972, while employed as Yardmaster and Car Inspector respectively at Congress Yard.
."

It is the opinion of this Board that the above notice meets the requirement of specificity set by this Board. It is obvious that a defense could be prepared from said notice.

The complaint as to the order of testimony is without merit in that 1) it violates no rule and 2) the investigation is not bound by any particular order of evidence presentation. It is incumbent on the claimant to show that the manner of adducing the evidence deprived him of a fair and impartial investigation.

orm 1
ge 3

Award No. 6525
Docket No. 6398
2-HB&T-CM-'73

As to the sufficiency of the evidence we must reiterate the time honored axiom that we will not substitute our judgment for that of the Carrier unless the record reveals that the Carrier's finding was wholly without merit. In the instant case evidence was adduced from which reasonable men who were able to observe the demeanor of the witnesses could have made the findings upon which the dismissal was based.

We will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killian

Executive Secretary

Dated at Chicago, Illinois, this 18th day of June, 1973.