

Award No. 2016
Docket No. 1899
2-AT&SF-BK-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Blacksmiths)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
(Western Lines)**

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Blacksmith Helper Frank Esquivel was, without just cause, assessed 30 demerits against his personal record.

2. That accordingly the Carrier be ordered to remove the aforesaid demerits from Blacksmith Helper Frank Esquivel's personal record.

EMPLOYEE'S STATEMENT OF FACTS: Mr. Frank Esquivel, herein-after referred to as the claimant, is employed in the carrier's Albuquerque, New Mexico back shop, and has a seniority date of February 14, 1941, as a blacksmith helper. His assigned work week is Monday through Friday, with rest days of Saturday and Sunday. His hours of work are 7:30 A.M. to 12:00 Noon, and 1:00 P. M. to 4:30 P. M., with one hour for lunch period.

June 11, 1954, claimant witnessed an incident wherein an altercation between Labor Foreman A. L. Barker, and an employe N. S. Roybal.

Claimant was called as a witness at a formal investigation when said foreman preferred charges against aforementioned employe N. S. Roybal.

Claimant testified at the said investigation as to what claimant knew, what claimant had seen with his eyes, and heard with his ears.

Carrier officers accused claimant of not telling the truth, and requested that he change his testimony.

When claimant refused to change his testimony, carrier preferred charges in letter dated July 26, 1954 against him, advising him to report for hearing at 10:00 A.M., July 29, 1954, a copy of which is submitted herewith and identified as Exhibit A.

Prior to the date of hearing, July 29, 1954, the carrier worked on an employe, namely Mr. M. S. Barreras, who worked with the claimant, and who

Award No. 3125—Third Division—Referee Luther W. Youngdahl:

“As we have stated so many times we cannot weigh evidence or pass upon the credibility of witnesses.”

Award No. 4479—Third Division—Referee Edward F. Carter:

“There is evidence in this record, which if believed, would warrant disciplinary action by the Carrier. It is the rule that this Board will not resolve questions as to the credibility of witnesses or the weight to be given to their testimony. Carrier's investigation officer hears their evidence and has a full opportunity to observe their conduct and demeanor at the investigation. This is important in determining who is telling the truth and who is not. Where, as here, there is evidence, which if believed, is sufficient to sustain the charge, we cannot say that the action of the Carrier was arbitrary or unjust, or an abuse of discretion on the part of the Carrier. Awards 3827, 3734, 3235.”

Award No. 4973—Third Division—Referee Robert O. Boyd:

“The testimony is conflicting; but this Board may not set aside the judgment of the Carrier in matters of discipline unless it is clearly demonstrated that the Carrier acted capriciously. As was said in the opinion to Award 4840: ‘. . . It is not the function of this Board to weigh the evidence, for if the evidence is substantial and tends to support the charge made, the findings of the Carrier on the evidence, even though it is in conflict, will not be disturbed.’”

Award No. 5034—Third Division—Referee Jay S. Parker:

“At the outset it must be conceded the evidence was conflicting and that some of it was favorable to the claimant. Likewise conceded there were some discrepancies in the testimony of the witnesses on which the Carrier relies to sustain its action. For that matter the same can be said of some of the testimony relied on by the claimant, including his own. Be that as it may, it must be remembered the fact evidence supporting a charge is contradictory or conflicting does not concern us so long as the record discloses substantive testimony which if believed is sufficient to establish the guilt of the person charged. See Award 3827.”

In conclusion, carrier asserts:

1. The claimant was afforded a fair and impartial hearing.
2. There was substantial evidence adduced at the hearing to support the charge preferred against the claimant.
3. The carrier, in the exercise of its managerial function and based upon the evidence produced at the hearing, determined that discipline should be assessed.
4. When considered in relation to the gravity of the offense with which the claimant was charged, the assessment of thirty demerits against his record was not arbitrary, capricious, or harsh.

Carrier submits that the claim on behalf of Mr. Esquivel is without merit and requests that the Board deny the claim in its entirety.

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.

The parties to said dispute were given due notice of hearing thereon.

This claimant was disciplined for the alleged offense of giving false testimony at a formal investigation. Carrier assessed thirty (30) demerits against claimant's service record.

The record indicates that there was evidence brought out at the investigation which, if believed by the investigating officer, would justify a determination of guilt. The investigating officer chose to believe the testimony which was in contradiction to the testimony of the claimant.

General Rule 21 is not a negotiated rule. Claimant was found to be guilty of its violation. It is generally recognized that a carrier may require its employes to abide by such general rules if the agreement between the organization and the carrier does not clearly eliminate the rule in question. In the case before us the claimant recognized, upon entering the service of this carrier, that "To enter or remain in the service is an assurance of willingness to obey the rules."

It is our opinion that the record before this Division fails to show that the carrier acted without justification or that its acts were arbitrary, capricious, or in bad faith.

The amount of discipline does not seem to be excessive in light of the seriousness of the offense.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of November, 1955.