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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6387
Docket No. 6253-I
2-IC-I-'72

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (Robert S. Frizzell
((Machinist)
(
(The Illinois Central Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement Machinist Robert S. Frizzell was unjustly suspended from service July 15, 1970 and assessed 15 work days off July 28, 1970.
2. That accordingly Carrier be ordered to pay Robert S. Frizzell for pay lost during the suspension plus six (6) per cent annually; remove all references to this matter from his service record and hereafter comply with the Agreement.

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.

Parties to said dispute waived right of appearance at hearing thereon.

This case involved alleged insubordination by Claimant and a fifteen day suspension.

Claimant raises a number of procedural issues, primarily dealing with Rule 39, which reads as follows:

"No employee shall be disciplined without a fair hearing by a 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 against him. The employee shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by the authorized committee. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights

unimpaired, and compensated for the wage loss, if any, resulting from such suspension or dismissal."

In his submission, Claimant alleges a series of violations of Rule 39 in the conduct of the discussion in the General Foreman's office on July 15, 1970. These objections have no merit, since that meeting on July 15, 1970 was not a hearing or formal investigation within the meaning of Rule 39. Similarly we shall reject the contention that the Carrier had no right to suspend Claimant prior to the hearing, since the Carrier's right is clearly spelled out in Rule 39.

Claimant further states that the notice of the formal hearing was deficient in that the charges were not precise and "the hearing officer was not designated". The letter from the Assistant Master Mechanic dated July 16, 1970 reads as follows:

"You are hereby instructed to report to the Shop Superintendent's office at Burnside Shops, Chicago Illinois, at 3:00 P.M. on Wednesday, July 22, 1970 for formal investigation.

You are charged with insubordination and refusing to perform assignment given to you by Mr. Evan A. Miller, Wheel Shop Foreman, on July 14, 1970 and July 15, 1970.

You are also charged with insubordination to Mr. E. M. Muehlenbein, General Foreman, on July 15, 1970.

You may bring such representatives and/or witnesses with you as permitted by Schedule Rule per System Federation No. 99.

At this investigation your past record and work performance will be reviewed."

The Claimant was well represented at the hearing; in response to questioning, he indicated that he had present both witnesses and representatives of his choice. He also stated, upon being questioned, that he was ready to proceed. Rule 39 is intended to insure employees a fair hearing, and "due process". If he was not prepared Claimant and his representatives had the opportunity to request a postponement of the hearing; this they failed to do. From the notice and the transcript we find that the charges were precise and that the Claimant waived any objection on this ground by proceeding with the hearing. We also find that Claimant's contention concerning the lack of designation of a hearing officer was palpably erroneous.

Claimant also raises an objection to the Carrier introducing information concerning his past record into the investigation. The Carrier has an obligation in discipline cases to assign penalties which are neither arbitrary nor unreasonable; an employee's record is most relevant to such determination. (See Second Division Award No. 5032 and Third Division Award No. 16074).

Claimant raises an additional issue in that he claims that the Director of Labor Relations of the Carrier "answered the appeal to him by letter dated February 1, 1971 but failed to disallow the claim." Rule 37 provides in part:

"...Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance...."

A reading of the letter dated February 1, 1971 indicates that although it does not contain the specific phrase "disallowing the claim" it is almost entirely devoted to a detailed explanation of why the disciplinary ruling is upheld. In Third Division Awards 10368 and 9615 this Board has held that Rules such as Rule 37 above do not require specific language to accomplish disallowance of a claim. We find that the letter of February 1, 1971 was timely and complied with the requirements of Rule 37.

With respect to the substantive aspects of the case, it appears that Claimant was asked to perform a particular job by his foreman on the morning of July 14, 1970. He told the foreman that it was not his assigned job but was instructed to do the job anyhow. On the following morning, the work not having been done, the foreman again asked Claimant to do the work immediately; Claimant responded that doing the job would create a hardship for him. Approximately an hour and a half later the foreman, seeing that the job had not been started, brought Claimant to the General Foreman's office. After listening to the Foreman's story the General Foreman asked Claimant what the trouble was and what his version of the incident was. Claimant stated that the Foreman was not telling the truth and that was all he was going to say. After this interchange Claimant refused to say anything else. He was immediately suspended and sent home. Subsequently Claimant filed a claim that the work in question was vacation work which the Foreman did not have the right to assign to him, under the terms of the vacation agreement. That issue is the subject of another case before this Board (6254-I). It should be noted that Claimant never verbally refused to do the work and that he testified that he planned to do the job later on July 15th.

It is clear from the entire record that Claimant, by his actions, did refuse to perform work assigned to him by his immediate supervisor and that he later alleged that the work should not have been assigned to him. It is further evident that Claimant refused to answer reasonable questions propounded by his General Foreman, claiming later that he should have been afforded representation at that meeting. In a similar case we said that "When claimant persisted in not answering, the General Foreman withheld him from service. It appears there was very little else to do and that the withholding from service was solely due to the fault of the claimant." (Second Division Award 3001). In Third Division Award 16286 we affirmed a principle which has been held in a long line of cases:

"...Claimant deliberately refused to comply with reasonable instructions or orders of his supervisors. It is a generally recognized principle in the railroad industry that reasonable orders issued by supervisory officers must be complied with. Whether the Claimant believed that the work involved could properly be assigned to him is not controlling. It was his duty to comply with instructions and thereafter seek a remedy through proper grievance channels for whatever rights he felt were violated."

Generally, the imposition of discipline is a management prerogative. This Board will not intervene unless the record indicates that there has not been a fair and impartial hearing, or when the evidence clearly does not support the charge, or in those cases when the penalties imposed are harsh and unreasonable. In the case before us there was a fair hearing, the evidence supported the Carrier's conclusions, and finally the penalty was not unreasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October, 1972.