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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6538
Docket No. 6376
2-BN-MA-'73

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

Parties to Dispute: { System Federation No. 7, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Machinists)
 { Burlington Northern Inc.

Dispute: Claim of Employees:

1. That under the controlling agreement Machinist A. C. Clark was unjustly suspended from service for ten days on May 8, 1971 to May 17, 1971, inclusive, at Pacific Junction, Iowa.
2. That accordingly the Burlington Northern, Inc., be ordered to compensate Machinist A. C. Clark for all time lost plus 6 per cent interest per annum.
3. That the Carrier be ordered to clear the "Entry of Censure" and all charges connected therewith, from his personal record.

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.

Claimant, while employed as a Machinist in the round house facility at Pacific Junction, Iowa, received the following notice dated April 13, 1971:

"Attend investigation in the Roundhouse Foreman's office at Pacific Junction, Iowa at 9:15 A.M. April 20, 1971, for the purpose of ascertaining the facts and determining your responsibility in connection with damage that occurred to Engines 2206 and 2029, when movement was made in the Roundhouse area with engine 2206 at Pacific Junction, Iowa at about 9:15 A.M., April 12, 1971. Arrange for representative and/or witnesses if desired . . ."

Following the investigation, Claimant was censured and suspended "for violation of Rules E, 700 and 705 for failure to inform other employees working on fueling track at Pacific Junction, Iowa that engine 2206 was unsafe to move account air brakes cut out and inoperative, while working as Machinist,

April 12, 1971, resulting in engine 2206 colliding with engine 2029 . . . as disclosed by investigation accorded you on April 20, 1971 . . ."

Among several procedural arguments, Petitioner contends that the charge was not precise as required by Rule 35 in that it did not contain the specific rules allegedly violated by Claimant. The last sentence of Rule 35 (c) states: "The notice must specify the charge for which investigation is being held." An examination of the transcript of the investigation indicates that Claimant was fully aware of the incident under investigation and neither he nor his representative asked for a continuance, after the safety rules were cited by the hearing officer, in order to prepare a further defense. We have held in many cases that a charge need only contain specific information on the incident or conduct being complained of and the time and place involved (See First Division Awards 5253 and 13207, Third Division Awards 13751 and 16121 among many others). In this case Claimant's rights were not impaired by the language of the Charge.

Petitioner further contends that Claimant was deprived of "due process" in that the hearing officer preferred the charge and also acted as Judge, Prosecutor and Jury. We find nothing in the rules prohibiting the company official bringing the charges from acting as hearing officer and also assessing the penalty, if any. This issue is well settled (See Awards Second Division 5360, 6004, 1795 and many others).

The Organization also argues that Claimant was deprived of a fair and impartial hearing, as provided by Rule 35(a), in that the hearing officer had pre-determined the merits and coerced and intimidated both Claimant and his representative in the course of the investigation. The transcript reveals that the hearing officer was exceedingly intense and persistent in his questioning of Claimant, coming close to the bounds of impropriety. However, Claimant and his representative were given every opportunity to present evidence and cross-examine witnesses; in fact Claimant at the conclusion of the hearing stated that the investigation had been conducted fairly and in accordance with the rules. We therefore reject this argument by Petitioner. (Awards 6004 and 3828).

Petitioner argues that the responsibility for the mishap was properly that of the foreman rather than of Claimant. The transcript of the hearing clearly indicates that Claimant, by his own admission, instructed the hostler helper to move the engine in question and also that he did not tell him that the air brakes were cut out. Perhaps others, including the foreman and the hostler were derelict in their duties, however each employee is responsible for the performance of his duties and his failures cannot be excused because others may also have been at fault (Award 1716). Over the years, in all divisions, we have ruled consistently that employee responsibility cannot be avoided by shifting the blame to supervisors or other employees (for example see First Division Award 12160, Second Division Award 4521 and Third Division Award 6307).

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On the merits, the evidence adduced at the hearing, including Claimant's admission, clearly supports the conclusion reached by Carrier. The penalty assessed, considering the proper concern for safety, was neither capricious nor unreasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Kellum
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June, 1973.