

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. 97, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(The Atchison, Topeka and Santa Fe Railway
(Company - Coast Lines -

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated the contractual rights of Mr. H. A. Allen when they removed him from service as a result of an investigation held on April 2, 1971.
- (2) That said investigation was illegal and improper and was not fair nor impartial.
- (3) That, therefore, Mr. Allen be restored to service with all rights, benefits and privileges and that he be compensated for all time held out of service at his regular rate of pay.

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 was dismissed from service by Carrier on April 16, 1971, following a formal investigation, for submitting fraudulent receipts with his expense accounts for January and February 1971.

Petitioner contends that the charge in this matter was improper because it was insufficient and indefinite. The charge in pertinent part states that the investigation was called:

"..... concerning possible discrepancies in your expense accounts submitted for meals and lodging during months of December, 1970, January and February, 1971"

Re Petitioner alleges that this charge did not specify which items in the expense accounts were being questioned and further that in the course of the investigation only the January and February expense accounts were dealt with - and they contained well over 160 different items. We have been concerned with the problem of preciseness of charges on many occasions. In First Division Award 19699 we said:

"..... It must be inferred that the parties wished a charge to be specific in order to make sure that any accused employee would not come to the hearing unprepared to defend himself and without opportunity to obtain witnesses who could testify in his defense. A precise and definite charge insures this desired result..... The real test of whether the wording of a particular charge is sufficiently and reasonably precise is whether, under the recorded circumstances of the individual case, the accused could have had rational doubt as to what he was being tried for."

The record of the instant dispute makes it abundantly clear that Claimant was aware of the expense account issues which were under investigation and that he was prepared to proceed at the time of the hearing. Hence we find that the charge in this matter was reasonably precise and made Claimant aware of the conduct being complained of. The ultimate test was satisfied, that of preparation for defense; neither Claimant nor his obviously sophisticated representative requested a postponement or continuance in order to prepare a further defense.

Petitioner further contends that the procedure of the investigation was defective in that Carrier failed to provide, after written request by Claimant's representative, information prior to the hearing including a list of witnesses to be called, a copy of all documents to be introduced into the investigation and a description of any physical evidence to be presented and an opportunity to examine it.

We cannot find any rule in the applicable agreement which requires the production of the evidence requested by Claimant's representative. See Third Division Awards 13397, 13670 and 13571. We do not concur in the reasoning expressed in Third Division Award 17311, cited by Petitioner, in that although pre-hearing data may have been necessary in that dispute, it was neither required by Agreement nor was its absence prejudicial to Claimant in this matter.

We find that the procedural arguments raised by Petitioner are not persuasive. We further conclude that the findings of Carrier were supported by substantial credible evidence and we may not substitute our judgment for that of Carrier in this respect (Award 6408). Furthermore the deliberate falsification of records, whether or not for personal gain, is a serious offense (Fourth Division Award 2269). Under all the circumstances the penalty of dismissal is not arbitrary or capricious and should not be altered.

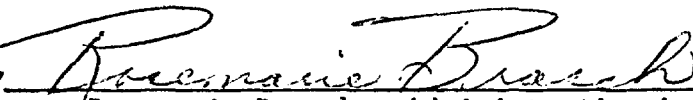
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of February, 1974.