

The Second Division consisted of the regular members and in addition Referee Martin I. Rose when award was rendered.

Parties to Dispute: (System Federation No. 162, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Southern Pacific Transportation Company
((Texas and Louisiana Lines)

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company violated the controlling agreement, particularly Rule 34, when it unjustly dismissed Carman Helper R. E. Cartwright from service on October 19, 1973.
2. That accordingly, the Southern Pacific Transportation Company be ordered to return Carmen Halper Cartwright to service and compensate him for all wage earnings he was deprived of beginning October 19, 1973, with seniority rights unimpaired, vacation rights, health and welfare rights and all other rights he would be entitled to if he had not been dismissed.

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 thereon.

This claim disputes Carrier's dismissal from service of Claimant, effective October 19, 1973, after investigation and findings that he failed to devote himself to his duties and was insubordinate.

Petitioner contends that Claimant was not given a fair and impartial investigation in that the presiding officer cited the Claimant for investigation, conducted the investigation and issued the dismissal decision, thereby acting as prosecutor, judge and jury. Petitioner also complains that the propriety of the investigation was undermined by the refusal of the presiding officer to receive in evidence the grievance signed by Claimant and charging the

accusative foreman with harrassment. According to Petitioner, the investigation established that Claimant performed his duties and any misunderstanding resulted because Claimant "continually felt" that he was singled out by the foreman for harrassment.

Carrier maintains that the investigation was procedurally proper in accordance with established requirements of the agreement and practice, that the presiding officer acted properly in connection with the grievance offered as an exhibit, and that on the merits, its findings and actions are amply supported by the testimony and evidence shown by the record of the investigation.

While the fact that the presiding officer signed the letter which notified the Claimant of charges against him and to attend investigation may appear inconsistent with a salutary climate for the investigation, it does not, standing alone, constitute violation of the requirements of a fair and impartial investigation. This notice letter is not like the indictment of a grand jury in a criminal case and does not even suggest, on its face, that the signer has issued it on the basis of cause to conclude that the addressee has committed the offenses charged in the letter. In the absence of some basis for such a suggestion, or recognizable objective evidence of prejudice or prejudgment, it may not reasonably be concluded that the signing of the notice letter by the presiding officer, in itself, foreclosed a fair and impartial investigation.

That the presiding officer issued the decisive dismissal letter appears consistent with the ingredients of fair trial. He heard the testimony and observed the witnesses, factors which are significant in connection with the resolution of factual issues such as were involved in the investigation presented in the instant case.

The complaint concerning the presiding officer's refusal to receive as an exhibit Claimant's grievance against the foreman does not pose such an egregious matter as to require nullification of the investigation. On behalf of the Carrier, it was argued that this complaint is not properly before the Board for the reason that it was not asserted and handled in the processing of this claim on the property. The record here and well established principle support this view (See Third Division Awards 10789, 14641, 18656, 19101).

With respect to the merits of the case, the investigation record discloses the foreman's testimony concerning the alleged misconduct of the Claimant and the Claimant's denials and answering testimony. This sharp conflict in the testimony presented factual and credibility issues within the decision making responsibility of the Carrier. We find no valid basis for disturbing these determinations of the Carrier.

A W A R D

Claim denied.

Form 1
Page 3

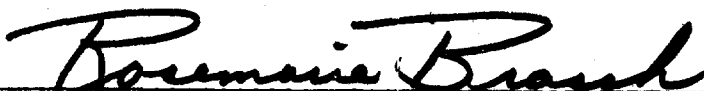
Award No. 7196
Docket No. 6976
2-SP(T&L)-CM-'76

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 14th day of December, 1976.