

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12682
Docket No. 12675
94-2-93-2-90

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

- "1. That in violation of the governing agreement, Mechanical Department Electrician Jerome Dickson was unjustly suspended from service by the Burlington Northern Railroad Company for a period of one day following an unfair investigation held on December 2, 1991 in Chicago, Illinois.
2. That accordingly, the Burlington Northern Railroad Company should be directed to restore all lost wages rights, benefits and privileges of which he has been deprived and, in addition, the entry of investigation and discipline should be removed 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 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 were given due notice of hearing thereon.

Claimant is a Mechanical Department Electrician assigned to Carrier's 14th Street Suburban Maintenance Facility in Chicago, Illinois. On November 18, 1991, Claimant received notice of investigation which read in pertinent part:

"Attend investigation in the Shop Superintendent's Office, 432 West 14th Street, Chicago, Illinois, at 3:00

P.M. on Monday, November 25, 1991, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to make the proper connections of the leads of Traction Motor #3 on BN 9911 on November 11, 1991, which delayed Train #1264 and damaged Traction Motor #3 on BN 9911 on November 12, 1991, while assigned as an Electrician at the Suburban Mechanical Facility at 432 West 14th Street, Chicago, Illinois."

The Investigation was ultimately held on December 2, 1991. Following that Investigation, Carrier advised Claimant that he was to be assessed a one day actual suspension. The Organization appealed the decision, and that appeal was denied. The Claim was subsequently processed in the usual manner including conference between the Parties on June 5, 1992, after which the matter remained unresolved.

The Organization raises two procedural objections. First, it alleges that the Rule Claimant was accused of violating was first mentioned by Carrier at the December 2, 1991 Investigation. Accordingly, Claimant had insufficient information regarding the charges to mount an adequate defense. In addition, the Organization maintains that Carrier failed to provide Claimant with a fair and impartial Hearing. Specifically, it notes that the same Carrier officer filed the charges, held the Investigation, called only his subordinate General Foreman as witness, failed to develop the facts by calling material witnesses, reviewed the transcript after the Hearing, and assessed the discipline.

With respect to the merits of the case, the Organization maintains that Carrier has not proven the charges against Claimant. It points out that there is a day's delay between the time Claimant allegedly misconnected the cables in question and the traction motor failure, and another day's delay between the motor's failure and the inspection to determine its cause. Moreover, there is ample evidence on the record that Claimant was assisted by his Foreman, and together they made the required electrical power checks at the time Claimant hooked up the traction motor. In addition, alternative probable causes of the motor's failure were not disproved.

Carrier submits that the evidence presented at the Investigation firmly establishes that Claimant violated Rule 570 of the Burlington Northern Safety Rules for not being alert and attentive and improperly crossing the connections of the leads of Traction Motor 3 on BN 9911, causing damage to the traction motor and delaying Train 1264. Rule 570 reads as follows:

"Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the company service while on duty."

The Carrier maintains that the evidence contained in the transcript, including statements made by Claimant himself, fully establishes Claimant's guilt. Carrier maintains that Claimant was proven negligent, and, therefore, the discipline assessed was warranted.

With respect to the Organization's procedural objections, it is a well-established principle, that, so long as a Claimant has sufficient information regarding the charges leveled against him to mount an informed defense, the precise Rule violation need not necessarily be cited in the notice of charges. It is apparent from the clarity of the notice received by Claimant (reproduced in part, above), that he could have no doubt concerning the specific incident precipitating the investigation. Thus, the Organization's first objection is not supported.

A careful review of the transcript gives considerable support to the Organization's remaining procedural objections, however. The Board concedes that it is not unusual for Carrier officers to serve in multiple capacities prior to, during, and following disciplinary investigations. Nevertheless, when they elect to do so, they assume a weighty responsibility to conduct themselves according to a high standard of fairness and objectivity. Carrier's officer in this case utterly failed to adhere to that standard. As the Board noted in Second Division Award 6795:

"Careful review of the transcript convinces us that the hearing officer did not function as an objective fact finder, but rather evinced a clear prejudgment of the Claimant's guilt. This was evidenced by...direct assertions by the hearing officer regarding Claimant's guilt.

...On this record we have both hearing officer prejudgment at the hearing and an improper overlapping of prosecutorial and judgmental roles, the net effect of which is to deprive claimant of a fair hearing. Carrier bears the serious responsibility of assuring an accused employe a fair and impartial hearing. This responsibility is ignored only at the peril that serious and prejudicial procedural defects may prove fatal to Carrier's substantive case."

In addition to asking grossly "leading" questions of his own witness on direct examination (transcript, p. 9, Q. 76, for example), Carrier's Hearing Officer established beyond doubt his predisposition to Claimant's guilt on at least two occasions during the investigation--to wit:

"Q. (Hearing Officer) Mr. Dickson, did your failure to make the proper connections of the leads on Traction Motor #3 on BN9911 on November 11, 1991 cause you to violate Burlington Northern General Rule 570?

A. (Claimant) No, it didn't.

Q. Mr. Dickson, how did your failure to make the proper connection of leads on Traction Motor #3 on BN9911 on November 11, 1991 allow you to comply with Burlington Northern General Rule 570?

A. By being alert and connecting up the leads the way they were disconnected, Mr. [Hearing Officer]." (Emphasis added.)

Moreover, at the end of the Hearing, when Claimant initially declined to characterize the Investigation as a fair and impartial one, Carrier's Hearing Officer reframed and rephrased the question no less than five times in order to lure Claimant into a response more satisfactory to the Hearing Officer. Such semantic sleight of hand is to be condemned, and would not have been necessary had the Hearing in fact been properly conducted.

In view of the clear procedural violations committed in the conduct of the Hearing, this Board has no choice but to sustain the claim as presented, without reaching the merits of the case.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin / lw
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 6th day of April 1994.