

Award No. 4749

Docket No. CL-4787

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed and refused to apprise Messrs. Charles P. Bowling and William J. Hart of precise charges in the notification of investigation dated January 27, 1948, and when it further refused to apprise the claimants of the precise charges not only to written but verbal requests from the employees' representatives.

(2) That Charles P. Bowling and William J. Hart be compensated for time lost from January 28, 1948 to April 26, 1948, due to improper and unjustified discipline administered by the officers of the Illinois Central Railroad Company in connection with the charges of alleged violation of Office Rule No. 14 and allegedly apparent conduct not becoming an employee.

OPINION OF BOARD: On January 27, 1948, about 3:00 P.M., two city police detectives came to the 7th floor of Carrier's General Office Building in Chicago and arrested claimants on a charge of violating the law against gambling. Bookie records, horse race betting slips, tip sheets and other records were found on their persons and in their desks. They were taken to police headquarters where gambling charges were lodged against them.

On the same day, the Carrier suspended claimants from service and notified them to appear for investigation on February 6, 1948. Claimants asked for and were granted a continuance of the hearing to February 13, 1948. The Organization contends that the Carrier failed to comply with Rule 24, current Agreement, in that it failed to apprise claimants of the precise charge against them as that rule requires. The charge preferred was in the following language:

"This will notify you of your suspension from service as result of your arrest in the office this afternoon, for alleged violation of office Rule No. 14 and apparent conduct not becoming an employee.

"Under the provisions of Rule 24 of the Schedule of Rules and Working Conditions for Employees represented by the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees, a hearing will be conducted in my office at 10:00 A.M., Friday, February 6, 1948. At that hearing any and all of your activities pertaining or related to the charges will be reviewed."

Office Rule No. 14 referred to in the first paragraph of the charge provides:

"Personal business must be conducted outside of office hours. Conversation on matters not concerning work should be avoided. Gambling and anything that pertains to it is absolutely prohibited."

The record shows that claimants each had a copy of the Office Rules and that they were familiar with them. The notice given was clearly sufficient to apprise claimants of the charges being made. They admitted at the investigation that they understood the charges. A notice which apprises employees of the charge made so that they may adequately prepare any defense they may have is adequate even though not couched in concise language. The preciseness of a criminal complaint is not required. We find no merit in the claim that the charge was not precise within the meaning of Rule 24.

It is urged that the evidence does not sustain the Carrier's charges. In this respect the record shows that bookie and other forms of gambling records were found on the persons and in the desks of the two claimants. They signed statements at police headquarters admitting their guilt. While claimants denied that they carried on any gambling activities on the property of the Carrier, the evidence is clear that the evil consequences of the activity had permeated the office force. Dozens of employees had dealt with these claimants and some had become heavily indebted to them. Claimants evaded answering pertinent questions on a technical theory that rules of evidence in criminal prosecutions apply to the enforcement of civil contracts. This is not so. Award 2945. Employees charged with rule violations who avoid answers to questions touching upon the claimed offense, subject themselves to inferences that the replies if made would have been favorable to the Carrier.

It is contended that the confessions made and the records taken from them were not proper to be referred to for the reason that they were unlawfully obtained. It is true that the criminal charges against these two employees were dismissed because of improper handling by the police. But the evidence is proper to be used in the investigation. If claimants feel that any personal right has been violated in obtaining such evidence their recourse is in the courts against those who have wronged them. The evidence was fully competent as proof of the charges. Of course, claimants are entitled to impeach its correctness if they could do so. But in the present case, the truth of the controverted evidence is not only not denied but questions bearing upon it are consistently evaded. The record shows that warnings had been posted on the bulletin board on two occasions and that supervisors had been directed to end this gambling activity. Claimants paid no heed to the warnings. The testimony of the witnesses, the circumstances surrounding the case and the evasive and unsatisfactory evidence of the claimants themselves is rather conclusive in establishing the violation. The evidence clearly sustains a violation of the Office Rules of the Carrier.

A point is made that the Carrier in causing the arrest of these employees elected to proceed in the criminal court and thereby waived the provisions of the contract. Assuming that the Carrier instigated the arrests, the argument is not sound. A prosecution under the criminal law has no effect upon the contractual liabilities of the parties. It is altogether different from a situation where a party has an election of civil remedies and, after pursuing one, attempts to pursue the other.

The discipline assessed is claimed to be unfair and unjust. We think not. These claimants not only violated Office Rule No. 14 after twice being warned, but they involved numerous other employees in the illicit practices. Without question, they created an office situation that any employer engaged in a legitimate business could not tolerate. They did not testify frankly and honestly and thereby show that they regretted their wrongful conduct. They saw fit, instead, to cast aspersions upon the officers of the Carrier and to assume that they have been victimized and unjustly charged. We cannot

say that the Carrier under such circumstances was unreasonable and arbitrary in suspending claimants for three months. A denial award is required.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1950.