

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NORFOLK AND WESTERN RAILWAY COMPANY

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

(1) That the Carrier erred, when it discharged Timber Preserving Plant Foreman, R. P. Hubble for allegedly being insubordinate at 3:30 P.M. on January 26, 1949.

(2) That Foreman R. P. Hubble be returned to his former position with Seniority and Vacation rights unimpaired and be reimbursed for all monetary loss suffered because of the Carrier's improper action.

OPINION OF BOARD: This is a discipline case. The charge reads as follows.

"January 26, 1949

Mr. R. P. Hubble, Foreman,
Radford, Va.

Dear Sir:

This is to advise you that you are discharged for insubordination at 3:30 P.M. today, January 26, 1949.

Yours truly,

(s) C. S. Wiltsee
Supt. T. P. Plant."

Petitioner urges the proof of the charge should be confined to acts or deeds occurring at the precise time set out in the charge. Further Petitioner urges to hold otherwise would deprive him of his rights under the Schedule of an opportunity to prepare a defense.

The record reflects that upon hearing the proof concerned acts and deeds occurring about 7:30 A.M., January 26. There is a statement in the submission Petitioner received the charge at about 1:30 P.M. the same day.

It may not be said Petitioner would be discharged for anticipated acts. By his motion during the cross-examination of Carrier's witness Wiltsee to

confine the proof to what happened on January 26, Petitioner certainly must have known what acts he would be called upon to plead to. Furthermore no motion was made to identify and specify precisely what did constitute the conclusion of insubordination.

While the charge can hardly be called a model of pleading the attack levelled at it may not be sustained.

The record has been carefully reviewed and we find sufficient evidence to sustain the findings and accordingly it will not be disturbed.

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 the Employes involved in this dispute are respectively Carrier and Employes 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 no violation of the Schedule as alleged was found.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of March, 1951.