

**Award No. 8179**  
**Docket No. CL-7626**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Howard A. Johnson, Referee**

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**PARTIES TO DISPUTE:**

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

**THE PENNSYLVANIA RAILROAD COMPANY**

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

Discipline of fifteen days' suspension imposed upon G. M. Saccocio, Stower, 37th Street Freight Station, New York, New York, New York Division, be removed and that he be reimbursed for all monetary loss sustained. (Docket N-359)

**OPINION OF BOARD:** The claim is for the removal of fifteen days' suspension imposed on G. M. Saccocio for insubordination.

On November 11, 1952, claimant, who had about a month earlier been advanced from trucker to stower, was assigned by his foreman to work as a trucker. If he had worked as such, he would have received the higher pay rate of stower (Rule 4-E-2(a)).

The contentions are that he did not have a fair and impartial trial, that insubordination was not shown by the evidence, and that the disciplinary action was arbitrary, capricious and without just cause.

Numerous arguments are advanced to support the contention that claimant did not have a fair and impartial trial. We have examined them in detail and find that the matters complained of either are unsupported by the evidence or are not shown to have prejudiced the claimant's rights.

It would unduly lengthen this opinion to discuss all the contentions but some of them should be mentioned. The first is that the hearing officer was also the accuser. The record on this matter consists of the following cross-examination of Foreman Kroeze by claimant's representative:

"Q. I would like to know the procedure you would follow in bringing a man up on charges?

A. I would inform the Agent of the incident and he would issue trial papers.

Q. What means of communication do you employ, Mr. Kroez?

A. I usually speak to him every morning when I am leaving.

Q. In other words, you make no written report?

A. Not necessarily.

Q. In connection with this case, Mr. Kroez, did you make a written report to your superiors?

A. I do not think I did.

By Mr. Greer:

I will clarify that in case the witness does not remember, I have a written report on this case.

Mr. Radice to Mr. Kroez:

Q. For the record Mr. Kroez, am I to understand that your last reply was in error?

A. Yes, it must have been."

The report was then placed in evidence as Exhibit "A". Claimant's representative stated, "It bears the signature of E. E. Kroez, Foreman." The body of it was as follows:

"G. M. Saccocio reported at 11 P. M. as a regular stower but as I was short tailmen to cover loads I assigned him to W. LoBue. He refused to work as a tailman and insisted that his job was stowing and continued to argue the point. I told him he was to follow instructions and do as he was told and if he did not want to work he should go home. He must have decided to go home as he failed to cover the load assigned to him and performed no services this night."

The record thus answers the demand made of the hearing officer whether he "received a complaint which necessitated the employe being served with notice \* \* \* requesting that he attend trial in connection with this insubordination."

Furthermore, under Award 5026 of this Division, the fact that the hearing officer signed the charge is not in itself sufficient to show that the employe did not have a fair and impartial hearing.

Objection is made that some observers were excluded during part of the hearing. But claimant was at all times accompanied by his "duly appointed representative", as provided by Rule 6-C-1(b), and also by the division chairman. The exclusion was not contrary to the Agreement, was not done in a manner showing bias, and is not shown to have prejudiced claimant's right to a fair and impartial trial.

At the request of claimant's representative, the hearing was continued from November 18 to December 17, 1952. After claimant and three other witnesses had testified for him concerning the incident, his representative requested, but was not granted, a further continuance to obtain another witness, whose absence was not explained and whose proposed testimony was not claimed as tending to add anything material. Furthermore, the facts of the case are not in issue, as hereinafter shown. Denial of the continuance is not shown prejudicial to claimant.

The record shows that the hearing officer conducted the sessions without bias, with as much order as possible, under the circumstances, and with courtesy in spite of some provocation. None of the matters complained of are shown to have deprived the claimant of a fair and impartial hearing.

Finally, the objection is made that the discipline was imposed by someone other than the hearing officer. The joint statement of facts shows only that "the Claimant was advised on Form G-32, that he had been disciplined by a suspension of fifteen (15) days." The notice was signed by P. S. Keegan, Supervising Agent, but does not indicate that the discipline was imposed by him rather than by the hearing officer. The objection is not sustained by the record.

The hearing involved a very brief conversation, in which the foreman assigned a trucker's position to claimant; the latter refused to fill the position and was told to work or go home. There were four witnesses for claimant and two for the carrier, but the testimony raised no material question of fact. It is necessary to refer only to the following testimony by claimant:

"Q. On the night of November 11, 1952, were you assigned to work the position of a trucker \* \* \* ?

A. That is right.

Q. Did you work on that position?

A. That night, no.

\* \* \* \* \*

Q. \* \* \* why didn't you accept the assignment?

A. Because I felt my job was a stower and there was junior men, there was truckers working as stowers and I felt it was their place to take the job first."

The contention is made that if the foreman needed additional truckers, he should have used stowers junior to claimant. But the testimony of the foreman was that "I had no experienced men to do the type of work I sent Saccocio to do. I can't put new men on the floor to handle freight and mark up car spots when they do not know what it is all about." He was not asked for any further explanation, and this Board has no jurisdiction to substitute its judgment for his in the assignment of employees.

It is further contended that claimant was not guilty of insubordination because the foreman then "gave him a choice" to work or go home. The argument has the merit of novelty but not of logic.

The foreman testified on cross-examination as follows:

"I did not say he was insubordinate as far as going home was concerned. I still say he was insubordinate as far as his assigned duties were concerned; \* \* \* he did not do his assigned duties. \* \* \* When this man was assigned to his duties at 11 P. M. he was told what to do and he refused to do it. The only alternative I had for him to work or to leave. I had no use for him if he would not do the job that was assigned to him."

Certainly there is no place on the job for one who refuses to fill his assignment, and the refusal constitutes insubordination. Awards 3576 and 4449.

**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 Employee involved in this dispute are respectively carrier and employee 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

We find no reason to interfere with the discipline imposed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By ORDER of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1957.