

Award No. 8806
Docket No. CL-9585

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

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

(1) The Carrier violated the terms of the existing Agreement by acting in an improper, unreasonable and unjustifiable manner in the conduct of an investigation of Mr. Dell C. Murdock on July 6 and 10, 1956; and

(b) The Carrier, after failing to develop proof of guilt, arbitrarily and capriciously dismissed Mr. Murdock from the service of the Carrier for alleged violation of Rule "G"; and

(c) The Carrier shall now be required to restore Mr. Murdock to his established position with full seniority rights unimpaired; and

(d) The Carrier shall be required to compensate Mr. Murdock for all wage loss suffered as a result of this dismissal, beginning with July 1, 1956.

OPINION OF BOARD: This is a discipline case involving Dell C. Murdock, seniority date of October 11, 1936, who worked on the second trick, 4:00 P.M. to 12:00 midnight, in position of Crew-Dispatcher, Yard Officer, Ogden, Utah. Claimant was on duty on Saturday, June 30, 1956. At about 11:20 P.M. on that date Assistant Superintendent M. C. Ingle relieved Claimant from further service that night on the asserted basis that the latter was in violation of Rule G. It appears the Claimant remained under pay until the end of the trick, however. Rule G provides:

"The use of intoxicants or narcotics is prohibited. Employees must not have intoxicants or narcotics in their possession while on duty."

Under date of July 2, 1956 Superintendent R. O. Bills issued Claimant written notice charging violation of Rule G and advised he was being held out of service pending investigation and hearing. The Superintendent conducted the hearing, following which he found Claimant guilty of having violated the subject rule and dismissed him from the service. Thereafter a claim for reinstatement of Claimant was submitted to the Superintendent but was declined. The matter was then progressed to Carrier's Vice President, the highest officer designated to handle such appeals.

It is contended in Claimant's behalf that the evidence adduced at the hearing did not support the charge; that the trial officer improperly excluded testimony pertinent to the investigation—thereby showing bias; and that Claimant was denied his right of appeal to the Superintendent since that latter had preferred the charge, conducted the investigation and made the decision of dismissal. It is urged that the Agreement required that the hearing be conducted by Assistant Superintendent Ingle as the claimant's supervising officer. The term "supervising officer" is interpreted by this contention to mean the employe's immediate supervisor.

Agreement Rule 30 provides in pertinent part:

*"No employe shall be disciplined or dismissed without a fair hearing by his supervising officer. * * **

*"Right of appeal to the next higher officer up to and including the Vice President, is conceded." * * **

In the subject instance it was the Assistant Superintendent who first observed the claimed improper condition of the Claimant, who obtained other witnesses to this condition, who relieved the Claimant from further duty at 11:20 P. M., on June 30, 1956, and who appeared as a complaining witness at the discipline hearing. It is not clear from the record that the Assistant Superintendent was Claimant's immediate supervisor. Rule 30 does not state that the hearing shall be held by the employe's **immediate** superior, although we concede that the contract language could be so construed. But in any event, we do not think it is contemplated by the rule that the hearing must be conducted by an officer so situated as the Assistant Superintendent was under the involved circumstances. It must be apparent that more independent consideration of the facts could be had by an officer who was removed from the events which precipitated the charge. Thus we do not find that Claimant's rights were violated by the fact that the Superintendent was the official who conducted the hearing and made the resulting decision. Moreover, it cannot be said that the Superintendent's action in giving written notice of the charge disqualified him from conducting the hearing.

With respect to the conduct of the hearing itself, we are of the opinion that the Superintendent was more restrictive in the admission of certain evidence than would have been desired. Nevertheless we note that the evidence of possible relevance that was initially excluded was subsequently admitted. The hearing record contains all **pertinent** evidence which was offered in Claimant's behalf. We do not find that prejudicial error was made in this respect.

No good purpose would be served in reviewing the facts disclosed at the hearing. There is substantial evidence in the record which supports the Carrier's finding that Claimant violated Rule G. We further note that on this property the violation of Rule G is regarded as a "capital" offense. The claim must be denied.

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 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 Carrier did not violate the Agreement.

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 April, 1959.