

Award No. 9345

Docket No. SG-10254

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen of America on the Illinois Central Railroad Company that:

(a) The Carrier violated the Signalmen's Agreement, as amended, (particularly Sections 73, 74, 75, 77, 78, 79, and 80), when on February 20, 1957, it arbitrarily and capriciously, without just cause, removed Signal Maintainer H. M. Prescott from the service of the Carrier without a fair and impartial hearing and, during the investigation held on February 25, 1957, the Carrier reviewed the past service record of the claimant strictly in abuse of its discretion as he had in the past been assessed discipline covering those past charges and such charges were not placed against him by the Carrier in its letter of February 21, 1957. The Carrier further violated the agreement when it refused to reinstate the claimant with all seniority and rights unimpaired after the investigation proved conclusively that the claimant was not guilty of the charges placed against him, and denied him the right of reviewing a copy of the transcript of the investigation before appealing the decision rendered on March 1, 1957, and further violated the agreement when it denied the claimant the right to a fair and impartial hearing on appeals to the Carrier officials.

(b) The Carrier now strike the charges from the record of H. M. Prescott and reinstate him, with all seniority and rights unimpaired, and allow him payment for the working hours lost while being unjustly held out of service, at the Signal Maintainer's pro rata rate of pay in accordance with Section 80 of the Agreement.

OPINION OF BOARD: On February 20, 1957, Claimant was suspended from service by the Carrier because it stated that he was obviously drunk and in no condition to perform his assigned duties. On February 21, 1957, the Carrier notified the claimant that he was to appear for a formal investigation covering his conduct of February 20, 1957. The notice stated that the purpose of the investigation was to determine whether or not the claimant was under the influence of intoxicants, resulting in his alleged inability to perform his duties as Signal Maintainer on the afternoon of February 20, 1957. The investigation was held on February 25, 1957. On March 4, 1957, the claimant

was notified that as a result of the evidence produced at the investigation he was found guilty as charged and due to the serious nature of the offense he was dismissed from service. A claim for reinstatement and pay for time lost on behalf of the claimant was instituted by the Organization's Local Chairman on March 6, 1957. Claim was handled on the property and carried to the highest designated officer of the Carrier and it was declined as lacking in merit on May 14, 1957. The employees submissions charge that the Carrier violated the Discipline Rule of the effective Agreement in that (1) It failed to notify the Organization of the findings of the investigation. There is no statement in Article 7, Section 73 or Section 79 that a notice of the findings will be given to the Organization. (2) That the Carrier failed to forward a copy of the transcript within seven days. Article 7, Section 79 states that a transcript will be furnished to the employe or his representative. This rule does not state when it will be furnished, but by inference it should be furnished before the seven day time limit of appeal expires. The Organization asked for a copy of the transcript and it was furnished them on March 11, 1957. This was ten days after the findings of the Carrier and the notice of dismissal given to the employe. Local Chairman Davis notified the Carrier on March 6, 1957 and amended this letter on March 12, 1957 stating that he wished to appeal the decision of the Carrier; he did not complain in either letter that the Carrier violated Article 7, by not furnishing the organization or the claimant with a copy of the transcript, therefore he waived that right when he appealed to the next highest officer of the carrier. His letter of appeal was based on the fact that the carrier did not furnish sufficient proof to substantiate a violation of Rule 8. The Local Chairman did not file a written request for an impartial hearing, as required under Section 73 of Article 7. (3) The Organization contends that the Carrier failed in its proof that the claimant was drunk. From a careful reading of the transcript we find substantial support for the Carrier's conclusion that the claimant was intoxicated and has been held by the Board many times, this is as far as the Board can go in looking into the evidence. It cannot resolve the conflicting statements nor can it substitute its judgment for the judgment of the carrier. Upon the basis of the evidence, we cannot say that the carrier was arbitrary or capricious in the discipline it assessed against the claimant. (4) Claimant was entitled to an investigation before he could be removed from service. Article 7, Section 73 states that an employe who has been in service more than thirty days will not be disciplined or held out of service without an investigation. This does not mean that an employe may not be held out of service before the investigation is held. If the rule meant what the employe contend it would state an employe could not be disciplined or held out of service prior to an investigation. (5) Claimant was not given a hearing on appeal. The claimant did not ask in writing for a hearing on appeal as set forth in Section 73, Article 7. (6) Signal Supervisor, T. J. Kremer was prejudiced. There is not sufficient evidence produced by the employes to substantiate this charge. (7) Claimant was not charged with any specific rule violation. The Carrier held an investigation to determine whether or not the claimant was intoxicated. The Carrier found from the evidence produced at the investigation that the claimant was intoxicated and could not have performed his assigned duties on February 20, 1957, in violation of Maintenance of Way Rule No. 8. If the claimant wished an impartial hearing on the violation of Rule 8 all he would have had to do is to request such a hearing, in writing, as set forth in Article 7, Section 73. He failed to so request such a hearing, in writing, and therefore waived the impartial hearing he was entitled to under Article 7. (8) The investigation was unfair because the carrier included claimant's past service record. The claimant was notified in the notice of the investigation that his personal record would be reviewed at the investigation. He raised no objection at the investigation to the using of his personal record, if discipline was

rendered by the Carrier. The Organization has failed in its proof that the introduction of Claimant's past record at the investigation was prejudicial to a fair decision that he was intoxicated on February 20, 1957. It was used in the determination of the discipline and the Carrier had the right to use it in that manner. (9) Carrier violated the applicable time limits in its handling of this claim. The Carrier contends that the applicable time limits for the progression of discipline claims is the sixty day time limit as set forth in Article V of the August 21, 1954 National Agreement, which Agreement Rule has superseded the time limits set out in Article 7. It bases this contention on Awards 8712 and 8475. This contention is not well founded regardless of Awards 8712 and 8475, due to the fact that Article V of the August 21, 1954 National Agreement is a general time limit rule and does not supersede the special time limit rule on Discipline as set forth in Article 7. This is made certain by the fact that in the 1958 Agreement between the same carrier and the same Organization, Article V is quoted under Article 7, Rule 700. However, the former discipline rule with its shorter time limit is now Rule 701. Both time limit rules are incorporated in the 1958 Agreement, therefore Article V of the 1954 National Agreement does not supersede Article 7. If it did there would be no reason for Rule 701 in the 1958 Agreement. One is a general time limit rule and Rule 7 is a special time limit rule for discipline cases. However, the carrier did not violate Rule 7 in this claim.

The record conclusively shows that the carrier's findings of guilt were fully substantiated by the evidence produced at the investigation. The time limit rules as set forth in Article 7 as to discipline were not violated by the carrier. Therefore this claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

That the Carrier did not violate the Agreement and the disciplinary action should stand.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April 1960.