

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY**

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

(a) The Carrier violated the terms of the Rules Agreement, effective August 1, 1945, reprinted January 16, 1956, when it suspended Millard Trammel, Jr., Stevedore, Local Freight Station, Kansas City, Kansas, from service September 22, 1956 to November 21, 1956.

(b) Millard Trammel, Jr. be reimbursed at Stevedore rate for the time he was suspended from September 22, 1956 to November 21, 1956.

OPINION OF BOARD: Claimant, a stevedore, was suspended from Carrier's service for sixty days because of alleged insubordination.

Prior to this disciplinary action, an investigation was held under Rule 39 of the applicable Agreement, and Claimant received due notice of the charges against him, a timely hearing, appropriate representation and fair opportunity to be heard.

Petitioner nevertheless contends that the investigation was unfair since the Superintendent, who was not present at the hearing, rather than the hearing officer, Mr. Buffalo, rendered the decision. There is no express requirement in Rule 39 that the officer conducting the hearing must render the decision but the problem is that a decision by the Superintendent at the first stage may deny Claimant the full avenue of appeal guaranteed by Rule 41. The objection was not raised on the property or in the submissions of the parties and Carrier has had no opportunity to explain or explore it. cf. Awards 7021 and 9102.

Quite apart from that question, however, we are satisfied that the record does not establish that the Superintendent actually rendered the decision, although proof as to that preliminary point is essential to the success of this procedural objection. The mere fact that the Superintendent signed the suspension notice does not alone support the conclusion that he rather than Buffalo made the initial determination as to the credibility of witnesses and Claimant's insubordination. See Award 8310. We therefore, find the objection to be without merit in the light of this record.

In our opinion, adequate substantial evidence, though controverted, was adduced during the investigation to sustain Carrier's findings as to insubordination. In line with numerous awards and well established principles of this Board (9449, 9175 and 7020) we are not disposed to disturb these findings, particularly since no material inconsistencies or defects are found in the evidence supporting the charges and it is not our function to weigh the conflicting testimony. The sixty day suspension is not unreasonable or excessive and we will not substitute our judgment for that of Carrier in that regard. See Award 8711. The claim will 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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1961.