

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

WESTERN MARYLAND RAILWAY COMPANY

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

(a) The Carrier violated the current Clerks' Agreement beginning on August 21, 1959, when it withheld Mr. W. E. Byrne from service pending investigation held on August 31, 1959 and subsequently suspended him from service for a period of thirty (30) days; and,

(b) That Mr. Byrne's record shall be cleared of all charges; and,

(c) That Mr. Byrne shall be allowed a day's pay at the pro rata rate of his assignment for August 24, 25, 26, 27, 28, 31, September 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, and 18, 1959.

OPINION OF BOARD: This is a discipline case. The Board finds no useful purpose would be served by reciting the facts in detail. It is sufficient to say that Claimant pursued a course of conduct during his off-duty time that led to his becoming involved in a fight with unidentified persons at his residence. As a result, he was injured and unable to report for duty on his regular assignment. In reporting the occurrence to Carrier officials, Claimant's version of what happened varied substantially from the police report obtained as a result of a subsequent investigation by the Carrier. Claimant later admitted the police report was correct and that his report to the Carrier had been designed to avoid "embarrassment".

After a preliminary investigation, Claimant was notified on August 21, 1959, to attend a formal investigation to be held August 31, 1959, "on a charge of conduct unbecoming an employee by becoming involved in activities which resulted in your inability to perform the duties of your assignment, and making false statements to Company Officials (sic). In accordance with Rule 28 of the agreement, you will be held out of service pending such investigation." On September 3, 1959, Claimant was notified of his suspension from duty for 30 days.

After a careful review of all the evidence of record, including the transcript of the investigation (trial), the Board finds that a preponderance of the evidence, including Claimant's own admissions, clearly establishes his guilt as charged. The gravamen of the charge against him was that his conduct while off duty resulted in his being unable to work his assignment and that he made false statements to the Carrier's Officials in connection therewith. This was proven. Accordingly, the Carrier properly could assess discipline for such conduct even if pursued while in an off-duty status. (See Awards 5104, 8298.) The discipline imposed, in the light of Claimant's past performance record, was not excessive.

The Board does find it necessary however, to consider and dispose of Petitioner's allegations that the wording of the charge was so general and imprecise as to constitute a violation of Rule 28, and that the investigation was not properly conducted because it was presided over by the same official who preferred the charge against Claimant, held him out of service, was the complaining witness, and made the initial finding of guilty as charged.

Rule 28 requires, among other things, that an employe confronted with disciplinary action must "be apprised in writing of the precise charge against him." The charge against Claimant was contained in Carrier's letter of August 21, 1959, and read: "... conduct unbecoming an employe by becoming involved in activities which resulted in your inability to perform the duties of your assignment, and making false statements to Company Officials (sic)." The singular lack of specificity as to dates and places relating to the misconduct, the activities and the false statements allegedly made, standing alone, would lend support to Petitioner's assertion of rule violation. But the evidence shows Claimant knew or ought to have known the nature of the offense with which he was charged. On August 18 Claimant had been interviewed by his supervisor concerning the matter, and the next day, August 19, in a preliminary inquiry he was confronted with the police report of the events leading to his injury and subsequent inability to fulfill his work assignment, at which time Claimant admitted that report was correct and that he had made false statement to Carrier officials. Under these circumstances, it could not reasonably be said that the written charge was so general and ambiguous as to deceive or surprise Claimant and thus leave him defenseless. As the Board has held on many occasions it is sufficient if the notice is timely and so worded as to fully apprise the accused of the nature of the offense charged, so that he may become fully prepared to defend himself (Award 1170; cf. Awards 4781, 5026, 6866). Accordingly, we here find the charge was sufficiently precise to meet the requirements of Rule 28.

As to the conduct of the hearing by the official who preferred the charge against Claimant, the Board necessarily must examine the record of that proceeding before deciding whether or not there is evidence of bias or prejudice on the part of the official. It is not enough to show that he presided; there must be evidence that his conduct or actions were so prejudicial as to deprive Claimant of a fair and impartial trial. (See Awards 6108, 6307, 5665). There is no such evidence in this record. The official was not a witness, as alleged; he did not testify against the accused, nor, as is sometimes the case, was his examination of Claimant designed to entrap or confuse him into making admissions against interest. We can find nothing prejudicial in the conduct of the presiding official from the transcript of the record of the investigation.

In view of the foregoing, the Board holds that there was a preponderance of evidence of probative value to support the finding of guilt; that none of

Claimant's procedural or substantive rights was prejudiced or abrogated; that the discipline imposed was not unreasonable or excessive.

Therefore, we will not disturb the disciplinary action taken and the 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 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 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 14th day of July 1964.