

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

SEBASTIAN A. REALE

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim that investigation was appealed within so-called time limits, even though investigation was invalid. Carrier completely violated Rule 32A, and that a hearing was never held, and I am not guilty as charged.

No. 1. I request the carrier to reinstate me with seniority unimpaired from July 27, 1957 up to reinstatement.

No. 2. Carrier shall, commencing April 12, 1963, and continuing until I am reinstated in service, be required to compensate me for all wages lost each day suspended from service, so long as violation exists, and clearing my name.

OPINION OF BOARD: After a three-fold investigation held on March 26, 1963, Claimant Sebastian A. Reale was dismissed from the service of the Carrier on its findings that he had violated certain rules of its Operating Department by being absent from duty without permission; by being employed in another industry without proper authority; and by sleeping on duty.

At the beginning of each investigation, which had been twice postponed at Claimant's request, Mr. Reale specifically waived his right to have an employe representative or appearance of witnesses in his behalf.

Both the Claimant and Carrier raise a number of procedural points with regard to the investigation and subsequent handling of the matter. Considering the record as a whole, however, we believe these procedural questions either have been waived or have not been presented with sufficient clarity to be determinative. We will, therefore, proceed to a decision on the merits.

By application of those principles governing our review of discipline cases which have become clearly established over the years, and which were substantially stated in Award 8431, we find from the record before us that the Carrier did not act in an unreasonable, arbitrary, capricious, or discriminatory manner, amounting to abuse of discretion. The Board, therefore, will not presume to substitute its judgment for that of the Carrier. The claim is 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of October 1965.