



Award No. 14443

Docket No. MSX-15820

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

H. V. ABRAMS

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Please accept this letter as my intention of filing claim against the Railway Express Agency Inc. for unfair labor practices in connection with my dismissal from service at Corbin, Ky., December 8, 1964, without a hearing in accordance with Rule No. 29 of the agreement between Railway Express Agency, Inc. and The Brotherhood of Railway Clerks.

OPINION OF BOARD: Claimant was dismissed from service because of alleged payroll irregularities. These alleged irregularities came to the attention of the Carrier in a letter dated October 17, 1964, from the Labor Organization's Local Chairman addressed to Carrier's Division Operations Manager, appealing a decision from the Claimant, who was then the Agent at Corbin, Kentucky. That letter, while making a claim on behalf of a senior employe who claimed that he was not properly assigned to the vacancy while Claimant was on vacation, stated that another employe (E. J. Von Gruenigen) was called "under the guise of relieving the agent and while allegedly doing so only performed such menial tasks as he was qualified . . . which were considerably less than required of the position." The letter went on to say:

"We are further informed that Mr. Von Gruenigen received a payroll check in his name and indorsed same in full over to Mr. Abrams. Mr. Von Gruenigen received none of the proceeds from this check to cover the Agent's relief work for which he was allegedly called under the agreement rules, in fact Von Gruenigen was not in the office during the period August 24th through August 29th, 1964, the period covered by the claim."

This is a serious charge which deserves immediate investigation and processing. Nonetheless, it was not until November 25, 1964 that the Carrier wrote to the Claimant as follows:

"A hearing will be conducted at the office of the Agent at Corbin, Ky. on Dec. 2, 1964 at 2:00 P.M. to determine facts in connection with alleged payroll irregularities in August 16-31, 1964 payroll.

Please arrange to be present at this time."

A letter, of even date, containing similar charges, was sent to Mr. Von Gruenigen setting the investigation for 10:00 A. M. on December 2, 1964.

When Claimant reported for the investigation, as instructed, at 2:00 P. M. he was handed a copy of the Von Gruenigen testimony, given that morning, and he was asked to relate his side of the controversy. This is an odd procedure, to say the least. His accuser was not present. Claimant had no opportunity to cross examine him. He could only challenge the damaging testimony, given by Mr. Von Gruenigen in the morning. He categorically denied that Von Gruenigen turned over the proceeds of his pay check to Claimant, and he described, in some detail, the work that Von Gruenigen performed during his vacation.

It should also be noted that the same Local Chairman who wrote to the Carrier on October 17, 1964, was present in the morning at the investigation of the charges filed against Von Gruenigen, but he was not present in the afternoon hearing on the charges against Claimant. It is significant that although the charges against Claimant and Von Gruenigen were similar in every respect, the Local Chairman questioned the adequacy of the charges on behalf of Von Gruenigen only.

Even the Carrier was not certain about the nature of the investigation. When the Local Chairman asked the Hearing Officer if the hearing was in the nature of an inquiry or whether penalties were contemplated, Mr. Stewart replied:

"Mr. Nalty, that I couldn't answer at the present time. It would be determined by the facts and circumstances developed at this investigation."

This should also apply to Claimant. Even the Carrier's Hearing Officer was uncertain of the nature of the charges. But at the very start of the hearing in the afternoon, the same Hearing Officer, conducting the investigation on charges against Claimant said:

"This hearing is being conducted in order to determine the facts and circumstances in connection with some charges made by Mr. Von Gruenigen in an investigation conducted at 10:00 A. M. this date, in connection with payroll irregularities at the Corbin, Kentucky office during the pay period August 16-31, 1964 . . ."

It was the first time that Claimant was advised that Mr. Von Gruenigen had charged him with any wrong doing. This did not meet the requirements of Rule 29 which provides that the charges shall be in writing and precise.

Carrier also failed to comply with Rule 29 in another respect. It did not apprise Claimant of the "precise charges against him within seven (7) days of knowledge by the Management of the alleged offense." Carrier was advised of the alleged offense by the Local Chairman's letter dated October 17, 1964. That was received the next day or two thereafter. Yet, the notice of the investigation was not sent to the Claimant until November 25, 1964, about five weeks later. Certainly, Carrier had "knowledge of the alleged offense" before November 18, 1964.

On the basis of the entire record, it is concluded that the Carrier was arbitrary, capricious and unreasonable in dismissing Claimant from the

service. Claimant had nineteen previous years of service without a blemish on his record.

On November 3, 1965, Carrier wrote to the General Chairman offering to reinstate Claimant "without prejudice to his right to seek reparations for lost time prior to the date of his reinstatement." Claimant turned down this offer. By such refusal Claimant unnecessarily compounded Carrier's liability. He is entitled to compensation only from December 8, 1964 to November 3, 1965.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated the Agreement.

AWARD

Claimant shall be restored to service with all rights unimpaired and with compensation for time lost from December 8, 1964 to November 3, 1965.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 20th day of May 1966.