

Award No. 14448
Docket No. TE-15699

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Central Railroad Company of New Jersey, that:

1. Carrier is in violation of Article 37(a) of the Agreement by not granting Mr. William M. Setrin a fair and impartial hearing as therein contemplated, and the rule mandates that no disciplinary action shall be assessed in the absence of such due process.

2. As a consequence, we request that, in accordance with (e) of same Article, Mr. Setrin's "record shall be cleared of the charge" and that "the employe shall be returned to his former position and compensated for all wage loss less amount earned in other employment."

OPINION OF BOARD: On February 26, 1965, Claimant William Setrin was notified of an investigation into charges of

"Violation of Rules G, P, and U — Rules of the Operating Department, February 24, 1965."

At the investigation, testimony of Carrier personnel who had secretly observed his activities on February 24, 1965, indicated that at various times he had left the premises of the Carrier, had visited neighboring taverns, had taken an extended lunch period, and had closed his position early. Following the investigation, the Carrier ordered the dismissal of Setrin from service on April 6, 1965.

The Organization contends that the Carrier in its charges improperly grouped rule violations, failed to give a precise charge of alleged violations, and refused to provide the Organization with either names of witnesses or evidence to be produced prior to the investigation. The Organization further avers that there was no proof of Setrin's drinking on the job or being under the influence, and that merely walking away from his job for a few minutes neither constituted a rule violation nor justified the penalty of discharge. Accordingly, it asks that he be reinstated with full back pay.

The Carrier denies any procedural irregularities in its investigation and asserts that the evidence clearly supports the allegations of drinking, dishonesty in his time claim and neglecting his work position. In view of these rule violations, and the Claimant's past record, the Carrier contends it had no alternative but to invoke the dismissal penalty.

Turning first to the procedural objections raised by the Organization, it is clear that the Carrier had the right to charge and investigate violation of more than one rule at a time without undertaking duplicative proceedings. As to the claim of imprecise charge, the evidence is clear that insofar as concerns Rule G and Rule U the Claimant was specifically informed of the suspicions of the Carrier's investigations on the day following the incident. This communication coupled with the rather specific charges covered by the two rules involved, should have given the Claimant sufficiently definite information for him to prepare his defense, and must thus be held to be sufficiently precise. (Award 4169) The same is not true insofar as Rule P is concerned where the language of the rule is so wide ranging and general, that absent specific discussions or references to alleged misconduct it was not possible for the Claimant to ascertain the nature of the activities attacked, and thus precluded the development of a rational defense. This Board has often held that the Carrier need not present the evidence on which it bases its case, (Award 13672) nor the names of its anticipated witnesses prior to the investigation.

Turning to the merits, the testimony at the investigation supports the Carrier's contention that the Claimant violated the rule against using intoxicants while on duty, since the evidence is that he had admitted to Carrier personnel to having had beer with his lunch, and was seen visiting taverns on three occasions during duty hours. Additionally, it is undisputed that the Claimant left his station early and returned late from lunch, and did leave his position prior to the regular end of his shift.

These infractions of Carrier's rules deserve the imposition of a penalty particularly the offense of leaving his work station early, for which the Claimant had been penalized with a fifteen day suspension in an earlier infraction. Nonetheless we find that the imposition of the dismissal penalty for these offenses is excessive and unjustified. The penalty shall be reduced to a disciplinary layoff of ninety days. The Claimant shall be reinstated with full seniority and vacation rights, and with compensation for earnings lost less interim earnings for the period from July 5, 1965 to the date of reinstatement.

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

That 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

The discipline assessed was excessive.

AWARD

Claim sustained to the extent indicated in Opinion and Findings.

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.