Award No. 15714
Docket No. CL-16632

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6153) that:

(a) The Southern Pacific Company violated the Agreement at Los Angeles, California, on March 23, 1966, by dismissing Mr. Harold F. Mahan from the service on the basis its evidence established proof of the offense for which he had been charged; and,

(b) The Southern Pacific Company shall now be required to allow Mr. Harold F. Mahan eight (8) hours' compensation at the rate of position No. 594, Stevedore, for each work day subsequent to the date of suspension, March 14, 1966, and continuing until he is restored to service.

OPINION OF BOARD: Harold F. Mahon, occupant of Stevedore Position No. 594 at Los Angeles Freight Station, was dismissed from service on March 23, 1966, after a formal investigation in which he was found guilty of being under the influence of intoxicants while on duty in violation of Rule G.

Brotherhood, on behalf of Mr. Mahon, contends that Carrier failed to accord Claimant a fair and impartial hearing, for it did not bring into the investigation Assistant General Foreman Rountree, a material witness. Furthermore, it asserts that Carrier's investigation and handling of the case denied due process to Claimant inasmuch as the Superintendent who made the initial determination that Claimant was guilty and assessed the punishment of dismissal was the same official to whom the appeal was made. Brotherhood also maintains that Carrier's investigation did not adduce evidence which justified the severe penalty imposed.

Carrier takes the position that the record establishes a violation of Rule G and that the penalty of dismissal was commensurate with the seriousness of the offense.

The record discloses that on March 14, 1966, the General Foreman observed Mr. Mahan staggering, appearing to have difficulty in focusing his

eyes, speaking incoherently, and having a strong odor of intoxicants on his breath. He was removed from service and a letter dated March 14 notified him to appear at a formal investigation to be held March 16, on the charge of being under the influence of intoxicants while working in violation of Rule G.

The evidence of the record and the transcript of the hearing clearly establishes that the formal investigation was fair and impartial. With reference to the contention of Brotherhood that Carrier's failure to call Assistant Foreman Rountree as a witness denied Claimant a fair and impartial trial since he might have given testimony favorable to him we find no evidence that Carrier refused to call him, that Claimant was denied the privilege of requesting him as a witness or that if present his testimony would have changed the outcome of the investigation.

After the formal investigation on March 16, 1966, with Mr. P. N. Garrett acting as conducting officer, a letter over the signature of the Superintendent was sent to Mr. Mahan informing him of the results of the investigation. This action did not preclude the Superintendent from acting as the appeal officer. Such procedure is consistent with the established pattern for handling discipline cases. Moreover, there is no evidence of prejudice to claimant's rights by the course the appeal followed in this case.

The testimony of the competent witnesses and of Claimant fully support the findings of guilt. We find that the sentence of dismissal considering the nature of the offense was not arbitrary, capricious or an abuse of discretion by Carrier.

For the reasons set forth, 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 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 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 30th day of June 1967.

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