



Award No. 15927
Docket No. DC-16868

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 351 on the property of the Grand Trunk Western Railroad, for and on behalf of Robert L. Cason, Cook, that he be returned to service with vacation and seniority rights unimpaired and compensation for net wage loss since March 11, 1966, account of Carrier dismissing Claimant from service on that date in abuse of its discretion and in violation of the Agreement.

OPINION OF BOARD: Claimant was dismissed from Carrier's service for being under the influence of alcohol on February 11, 1966, while on duty as Second Cook in Dining Car 1346, Passenger Train No. 20 from Chicago, Illinois, to Toronto, Canada. An investigation was duly held on March 1, 1966 concerning charges that Claimant had been under the influence of alcohol and missing from his post in the kitchen of Dining Car No. 1346 between the hours of 6:00 P. M. and 8:30 P. M.

The instant claim was duly processed on the property and is bottomed on the contention that Claimant was denied a fair and impartial hearing because his representative was not allowed an opportunity to cross-examine four (4) Carrier witnesses until after the completion of their direct testimony. During consideration of this claim on the property, Petitioner also challenged the specificity of the notice given Claimant as compared to the scope of the subject matter covered by the hearing; the use of prepared statements by Carrier witnesses without advance copies for Claimant's representative; the competency and credibility of the Carrier's witnesses; and the hearing officers reference to the investigation as an "adversary" proceeding.

Carrier contends that the evidence clearly supports a finding of guilt, that the measure of discipline was commensurate with the offense, and that procedural objections raised by Petitioner are either without merit or failed to materially prejudice the substantive rights of the Claimant.

A careful review of the record reveals that the notice of the investigation received by Claimant contained two specific allegations, which are (1) that he was under the influence of alcohol while on duty and (2) that he was missing from his post in the kitchen of Dining Car No. 1346 between the hours of 6:00 P. M. and 8:30 P. M. on February 11, 1966. Although mention of other incidents was made during the investigation, the evidence supports Carrier's position that the disciplinary action in dispute resulted solely from the two charges specified in the notice received by Claimant. Therefore, we find the

notice sufficiently distinct to advise Claimant as to the nature of the charges against him.

Likewise without merit is Petitioner's assertion that Claimant should have received advance copies of prepared statements read by Carrier's witnesses at the hearing. There is no rule in the controlling agreement requiring the production of such written statements, and a discovery procedure is a matter for negotiation between the parties. Award 14187.

The right to cross-examine was not impaired because the hearing officer refused to allow cross-examination until the completion of direct testimony by Carrier's witnesses in the absence of a rule providing for cross-examination in the manner urged by Petitioner. Full opportunity for cross-examination was granted to Claimant's representative, and we find no denial of due process arising out of the procedure invoked by the hearing officer.

Petitioner challenges the credibility of Carrier's witnesses without offering any probative evidence to support such assertions. The testimony of all four witnesses called by the Carrier corroborates the Carrier's position that the Claimant was intoxicated while on duty. As to their competency to make such a determination, it is well established that the testimony of laymen is of probative significance. Awards 15574, 10928 and 8993.

Finally, the hearing officer's reference to the investigation as an "adversary" proceeding is not prejudicial. To the extent that the parties represent conflicting positions and offer evidence to support them during a hearing, an investigation constitutes a quasi-judicial proceeding in which the respective parties are advocates.

In view of the foregoing, we must conclude that the Carrier's conduct of the investigation was neither vindictive nor prejudicial, and that none of Claimant's procedural or substantive rights were abrogated. Furthermore, we find no valid basis for substituting our judgment for the disciplinary action taken by Carrier. The claim must be denied. Award 15574.

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 31st day of October 1967.

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