



Award No. 16007
Docket No. SG-15410

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

**JOINT TEXAS DIVISION of Chicago, Rock Island and Pacific
Railroad Company and Fort Worth & Denver Railway
Company**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Joint Texas Division of the Chicago, Rock Island and Pacific Railroad Company, Fort Worth and Denver Railway Company, that:

Carrier be required to exonerate Signal Maintainer Jessie C. Haynes, Corsicana, Texas, clear his record, and compensate him for time lost account thirty-five (35) days' suspension December 11, 1963 through January 16, 1964. [Carrier's File: L-130-294]

OPINION OF BOARD: The essential facts involved in this dispute are not in issue. Claimant, a Signal Maintainer, failed to comply with an order to repair a signal during the evening of September 22, 1963 because he was unable to obtain authority to use his personal automobile for necessary transportation from the dispatcher on duty. Ultimately, the signal was repaired by Claimant during the early morning of September 23, 1963, after Claimant had phoned Carrier's Assistant Signal and Communications Supervisor for permission to use his automobile in connection with such work. The disputed disciplinary action resulted from Claimant's alleged violation of Rules N and 426 (b) of Carrier's Rules and Regulations for Maintenance of Way Structures, which in part provide as follows:

"RULE N.

Courteous deportment is required of all employes in their dealings with the public, their subordinates, and each other.

Employes who are . . . insubordinate . . . quarrelsome or otherwise vicious . . . will not be retained in the service.

Employes must not enter into altercations . . . on Company property."

"RULE 426 (b).

In all cases of failure, damage or other irregularity, repairs must be made promptly, and a brief report made by wire to Superintendent, Chief Dispatcher and Supervisor, stating extent of damage or delays, cause and time repaired. As soon as repairs have been completed, a written report must be forwarded to Supervisor."

The record reveals that Claimant was indignant concerning the difficulties he encountered in obtaining permission to use his automobile after discovering that the motor car assigned to him was inoperative. Furthermore, he displayed his anger during a conversation with the dispatcher on duty during the early morning of September 23, 1963.

Petitioner contends that Claimant was denied a fair and impartial investigation and further that the discipline invoked was unwarranted and excessive.

Carrier denies that Claimant did not receive a fair and impartial investigation, and urges that the penalty imposed was commensurate with the improper conduct of Claimant.

Initially, Petitioner avers that Claimant was not apprised in writing of the exact charge or charges against him before the investigation. The record reflects that the investigation was originally scheduled for October 2, 1963, convened and postponed on October 29, 1963, and recessed and rescheduled several times thereafter until finally held on December 2, 1963.

The specific notification of the investigation received by Claimant cited both the particular rules allegedly violated by Claimant and the precise period of time during which the alleged violation occurred. Although previous Awards are conflicting concerning the sufficiency of notice, it is generally agreed that the basic purpose is to grant an employee the opportunity to prepare his defense against accusations of an employer. Awards 13969, 13953 and 11170. Although the particular rules cited by Carrier in the notice of investigation contain a number of miscellaneous provisions, including those herein applicable, the notice clearly specified the period of time involved which should have sufficiently apprised the Claimant of the subject matter of the investigation. Furthermore, the series of postponements offered Claimant an opportunity to eliminate any possible ambiguity resulting from the original notice of investigation.

Petitioner next challenges the validity of the investigation on the basis of the hearing officer's refusal to state specifically whether or not Claimant was charged with any rule violation. No provision of the applicable agreement requires such a statement on the part of a hearing officer. Furthermore, the notice of investigation clearly refers to Claimant's alleged violation of specific rules, which was the subject matter of said investigation.

Petitioner also contends that the proceeding on the property was unfair because the Carrier's initial decision was rendered by an official other than the officer who conducted the investigation. However, there is no evidence that the hearing officer failed to make the initial determination. Furthermore, there is no provision in the applicable rule providing that a hearing officer must render the decision. Awards 9819, 10015, 12001, 13383, and 15714.

Petitioner further charges that the proceeding on the property was procedurally defective for the following reasons:

- (1) Carrier failed to sign the transcript of the investigation,
- (2) Carrier's hearing officer refused to sequester witnesses at the request of Petitioner's representative, and
- (3) Carrier's decision of December 26, 1963, signed by the Superintendent, was not a proper denial under the August 21, 1954 National Agreement.

As to Carrier's failure to sign the transcript of the investigation, Rule 51 (c) of the applicable Agreement merely provides that a copy of the transcript of the investigation will be furnished the employe and his representative. Petitioner asserts that Carrier violated certain instructions, but failed to submit them in evidence. In any event, such instructions are not part of the Agreement, and failure to observe them would not constitute reversible error in this case. Awards 6168 and 7770.

The refusal of Carrier to exclude witnesses from the hearing room until called to testify does not violate any provision of the Agreement. Exclusion of witnesses is discretionary with the hearing officer in the absence of explicit language in the Agreement requiring such exclusion of witnesses during the testimony of others. Awards 15025, 14391 and 9326.

The letter of Carrier's Superintendent, dated December 26, 1963, in part, stated as follows:

"I have reviewed your letter of appeal, the investigation held, and the discipline assessed, and I feel the discipline assessed was proper.

"Therefore, your appeal and any time claims in connection therewith is declined."

Although the denial of Claimant's appeal does not describe the specific reasons for disallowance, it clearly shows that the denial was based upon a review of the entire record, including the investigation, the punishment assessed, and the Claimant's letter of appeal. This Board as well as the National Disputes Committee have ruled on similar contentions and have found that similar letters of denial constitute proper compliance with the applicable language of Article V, 1 (a), of the 1954 National Agreement. Awards 14864, 14846, and Decision No. 11 of the National Disputes Committee. Accordingly, we find no merit in Petitioner's objection.

In view of the foregoing, we must conclude that the various procedural objections raised by Petitioner in this case do not constitute reversible error, and that the Claimant was not denied a fair and impartial investigation.

Finally, Petitioner contends that Claimant was not guilty of violating either Rule N and 426 (b) of Carrier's Rules and Regulations for Maintenance of Way Structures, and that he should be exonerated by Carrier.

The record reveals that Claimant originally was called for service troubles at 7:25 P.M., September 22, 1963; that his motor car became inoperative before he reached the site of signal trouble; that he reported the situation to the trick dispatcher then on duty and requested permission to use his personal automobile for necessary transportation; that the trick

dispatcher was not authorized to grant permission for use of Claimant's automobile and refused to seek permission from others authorized to grant it; that Claimant went home after filing a report with the telegrapher then on duty; that Claimant was again called for the same signal trouble at approximately 12:15 A.M. on September 23, 1963; that Claimant again sought permission to use his automobile for necessary transportation from the trick dispatcher then on duty and, finally, phoned collect the Assistant Signal Supervisor at Fort Worth at approximately 12:45 A.M. on September 23, 1963, who granted permission to Claimant to use his car; that Claimant entered into an altercation with the trick dispatcher then on duty during which he accused him of lying with respect to his authority to authorize Claimant's use of his automobile and referred to said dispatcher as a "little jerk"; and that, finally, Claimant repaired the signal trouble for which he was compensated on a call basis under the Agreement between the parties.

Although this Board sits as an appellate body without authority to weigh the evidence de novo if Carrier's findings are supported by substantial evidence, we do possess the power to review disciplinary action imposed if it appears that the penalty is arbitrary or an abuse of discretion.

In the instant dispute, Claimant's actions were clearly provoked by his inability to obtain definitive instructions following the breakdown of Carrier's motor car assigned to his use. Although his references to the trick dispatcher on duty during the early morning of September 23, 1963, may have violated the Carrier's rules concerning deportment, sufficient provocation was present to try the patience of a reasonable man under similar circumstances.

In view of the foregoing, we find that the penalty imposed was excessive and arbitrary. Although Claimant's conduct was improper, the Carrier's suspension for thirty-five days was unwarranted under the peculiar circumstances found in this dispute. Therefore, we will sustain the claim.

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 Agreement was violated.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1967.

**SPECIAL CONCURRING OPINION TO AWARD 16007,
DOCKET SG-15410**

This Award very properly set aside the punishment imposed upon Claimant but, in deference to the discipline rule arrived at in across-the-table negotiations between the parties, I am compelled to register disagreement with the idea that mere reference to rules that contain a number of miscellaneous provisions amounts to advising the accused "of the exact charge or charges against him." Since Carrier agreed that the charge or charges will be exact, the Employees have no reason to guess what the charge will be. Furthermore, the Employees should not have to, during postponements or any other time, aid and counsel Carrier in the matter of framing an exact charge or charges.

G. Orndorff
Labor Member