



Award Number 17532

Docket Number CL-17936

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6483) that:

1. Carrier violated the rules of the Clerks' Agreement when it issued a faulty notice of investigation on March 6, 1967 to Assistant Foreman P. Bellomo, conducted a faulty investigation on March 9, 1967 and disciplined P. Bellomo for five (5) actual working days by depriving him of due process of law when Carrier denied him of his contractual rights of appeal in the regular order as provided in Rule 40.
2. Carrier shall now (a) compensate P. Bellomo for the loss of five (5) days of work and pay and (b) expunge from his record any notation placed thereon as a result of this improper action. (Claim No. 1929)

OPINION OF BOARD: In this discipline case, Claimant alleges that Carrier violated the Agreement when it: (1) failed to furnish him with a proper letter of specific charges; (2) conducted an investigation by an interested, biased and hostile officer resulting in an unfair and partial hearing; (3) permitted the Claimant to be found guilty and penalty assessed against him by an officer not ever present at the investigation; (4) failed to prove any alleged violation of any rule or regulation.

First, in regard to the alleged notice defect as claimed by the Organization, we find that Carrier's notice herein was sufficient in that it properly informed Claimant of the charges made against him by Carrier so that he could properly prepare his defense or defenses to said charges.

Second, the record shows that Claimant was afforded a fair and impartial hearing, and the investigation officer did not conduct said investigation in a biased or hostile manner toward Claimant.

Third, it was not fatal to the legality of the investigation to have Carrier's Superintendent Downey, who was not the hearing officer, render the discipline decision and assess the penalty against Claimant in this instance.

Claimant failed to cite any rule requiring that the presiding officer at the hearing render a verdict and assess the penalty. See Awards No. 14021 and 17091.

Finally, the record clearly shows that Carrier sustained its burden of proving Claimant guilty as charged. Therefore, we must deny this 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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October 1969.