



Award Number 17837

Docket Number SG-18339

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

PENN CENTRAL COMPANY—NORTHERN REGION
(Formerly New York Central Railroad Company—Northern Region)

STATEMENT OF CLAIM: Claim of the General Committees of the Brotherhood of Railroad Signalmen on the former New York Central Railroad Company (New York District, Boston and Albany Division, Eastern District, Western District, Northern District, (Southern District); the Cleveland Union Terminals Company; and Indiana Harbor Belt Railroad:

Appeal under the provisions of the current Brotherhood of Railroad Signalmen's Agreement covering Retarder Technicians, Inspectors and Foremen employed in the Signal Department, on behalf of Signal Foreman P. J. Letourneau, account having been demoted from his position of Signal Foreman by the Carrier, such demotion resultant from a hearing held in Detroit, Michigan, on date of April 3, 1968, the demotion effective April 20, 1968, all facts contained in Carrier File: 65-28-22-5. (Carrier's File: SIG 4-7.3)

EMPLOYEES' STATEMENT OF FACTS: P. J. Letourneau, Signal Foreman of C and R Gang Number 14, E. E. Garner, Signal Mechanic and A. R. Powelson, Signal Mechanic assigned to C and R Gang Number 14, received notice dated March 14, 1968, signed by District Engineer Communications and Signals R. A. Calendine stating:

"Please arrange to attend a hearing, March 20, 1968 at 9:00 A.M. in Room 348 of the New York Central Depot, Detroit. Regarding apparent violation of Rule 3094 of the Rules for the Government of the Signal Department, effective May 1, 1963.

This hearing will cover construction performed at Chelsea, Michigan on the 20th and 21st of February, 1968.

Yours truly

R. A. Calendine
District Engineer Comm. & Sig.

Please appear as a witness for this hearing at place, time and date stated above.

You are hereby disqualified as Signal Foreman on the Northern Region effective April 20, 1968.

Copy of transcript of hearing attached.

R. A. Calendine
District Engineer of
Comm. and Signals

cc: R. T. McGill—Two copies of transcript of hearing attached.

H. W. Ahrens—One copy of transcript of hearing attached.

L. D. Strunk—One copy of transcript of hearing attached.

E. E. Garner—One copy of transcript of hearing attached.

H. C. Stevens—Supervisor of Personnel Records."

The Carrier's decision was first appealed in this case on May 2, 1968 by the Local Chairman. This appeal was properly denied by the Carrier under the provisions of the applicable time limits for the handling of discipline cases. Thereafter, the case was properly handled under such time limits rule up to and including the appeal by the General Chairman to the highest officer designated by the Carrier to handle such matters. On July 1, 1968, the Assistant General Manager-Employee Relations, Mr. J. B. Kuhnle, Jr., the highest officer designated by the Carrier to handle such matters, denied the General Chairman's appeal. (Carrier's Exhibit No. 1)

Upon request of the General Chairman the Carrier agreed to a meeting held on August 6, 1968, to further discuss the case. On August 7, 1968, the Assistant General Manager-Employee Relations, Mr. Kuhnle, confirmed the meeting held on August 6, and reaffirmed his denial decision of July 1, 1968. No further handling was made of the case until the Carrier received a copy of the Organization's notice to the Board of its intent to submit the case before this Board by April 25, 1969. The notice of intent to the Board was dated March 26, 1969.

A copy of the record of the hearing here in question is attached hereto as Carrier's Exhibit No. 2.

(Exhibits Not Reproduced)

OPINION OF BOARD: On April 15, 1968 Claimant was disqualified as Signal Foreman after an Investigation held on April 3, 1968. Employees now contend (1) that the letter notifying Claimant of the Investigation is confusing, (2) that the charge is not precise and (3) that Claimant did not receive a fair and impartial hearing.

Carrier fully complied with the provisions of Rule 19 of the Agreement. Information relating to the defective signal came to the Carrier's attention on March 12, 1968 and on March 14, 1968 a letter was sent to Claimant advising him to attend a hearing on March 20, 1968 which was postponed to April 3, 1968. That letter charged the Claimant with "apparent violation of Rule 3094 of the Rules for the Government of the Signal Department, effective May 1, 1963." The letter is not vague. The charge is adequately precise. Certainly, it is more reasonable to advise the Claimant of an "apparent" violation of Rule 3094 than of an "absolute" violation. The evidence at the hearing determines whether there was or was not a violation of the rule. Claimant was sufficiently apprised of the charge.

A reading of the transcript of the hearing discloses no bias, discrimination or violation of any of Claimant's rights as an employee. There is no convincing evidence that the hearing officer was arbitrary, capricious, prejudiced or unreasonable. The charge against Claimant is fully sustained. He did not exercise the care and caution required of him as a Foreman. He failed to comply with Rule 3094. There is no merit to the claim.

Since the claim is denied on the merits, there is no need to consider the time limit issue raised by the Carrier.

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 Carrier did not violate the Agreement.

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 24th day of April 1970.