



Award Number 17900

Docket Number MW-18386

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Machine Operator P. W. Bailey was without just and sufficient cause and on the basis of unproven charges. (System file L-63-T-67/Case No. 488)
- (2) Machine Operator P. W. Bailey be reinstated with seniority and all other rights unimpaired and that he be compensated for all wage loss suffered in accordance with Rule 25 (i).

OPINION OF BOARD: This is a discipline case in which Claimant admitted: he had knowledge of and admitted violation of Safety Rule 4, cited, relative to reporting an on-duty injury which he incurred, allegedly, on August 17, 1957. His testimony:

"Report to your supervisor, as soon as possible any on-duty injury in which you are involved and any off-duty emergency medical treatment that you received. (Emphasis in original)

"Q. Division Engineer R. H. Peak: Do you feel that you lived up to the rule in this case?

"A. Machine Operator P. W. Bailey: No, Sir, Mr. Peak, I don't. (Emphasis added)"

Investigation was conducted on September 5, 1967. By letter dated September 22, 1967, Claimant was informed that he was found guilty of violating Rule 4; and, was dismissed from service.

In its handling of the case on the property Petitioner never questioned Claimant's dismissal as being Carrier's right to assess discipline. In other words it did not make issue of the merits. Instead it appealed the claim on the basis that the penalty was excessive and entered a plea for leniency. The plea was denied.

Whether a Carrier should grant leniency is its sole prerogative. Compare this with our holdings that we do have authority to reduce a "penalty" if we find it excessive. See our Award No. 6085. The entry of the plea for guilt which becomes no longer open to question.

Having no jurisdiction as to whether Carrier should accept and act upon a plea for leniency, we must, within the limits of our jurisdiction, deny 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 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.

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 8th day of May 1970.