



Award Number 17965

Docket Number CL-18229

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6561) that:

1. Carrier violated the rules of the Clerks' Agreement when decision to apply discipline of fifteen (15) days actual suspension to Cleve Devine, trucker at 14th Street Freight Station, Chicago, Illinois, as a result of investigation held November 25, 1966 was made by the Superintendent of the Marion Division instead of the Freight Agent who was the Investigating Officer who conducted the investigation.
2. Carrier's action in suspending the claimant for fifteen (15) days was improper, unjustifiable, unreasonable and unwarranted.
3. Carrier shall now be required to compensate Cleve Devine for all time lost, retroactive to December 10, 1966 as a result of discipline applied and shall expunge from claimant's personnel record, any notation placed thereon as a result of their improper action. (Claim 1871)

OPINION OF BOARD: Claimant was employed as a Trucker at one of Carrier's freight houses. On November 21, 1966 he was formally charged with insubordination, a violation of Rule 5 of Instructions to Freight House Employees, and informed that investigation would be conducted on November 28, 1966. The investigation was duly held and based on the testimony presented thereat the Claimant was found guilty and disciplined to the extent of 15 days suspension.

Petitioner first contends the notice of charge was improper. We have examined the notice and find that it was entirely proper in that it informed the Claimant of the date of the occurrence, the time and location of the investigation and that it was sufficient to enable him to prepare his defense. Furthermore, exception to the charge was not taken at the beginning of the investigation. Awards 16170 and 17241.

Petitioner next contends that Carrier failed to prove the charge and that therefore the discipline assessed was unwarranted, unjustified, discriminatory and an abuse of discretion. We have carefully reviewed the transcript of the investigation and find that it clearly shows by substantial evidence that Claimant's attitude and actions were insubordinate and his guilt firmly

established. The discipline assessed was not disproportionate to the gravity of the offense. Consequently, Carrier's action was not discriminatory nor an abuse of discretion.

Petitioner's final contention is to the effect that the discipline was improperly assessed by reason of the Superintendent having signed the usual form of notice advising Claimant of the discipline assessed. There is nothing in the Agreement which provides that the official signing the discipline form must be present at the investigation. This matter was recently decided for these parties in a decision involving the same rule of the same Agreement that is here involved. In that decision (Award 17532, Referee P. C. Dugan), we stated:

"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."

We affirm that decision and similar decisions in our Awards 16347 and 16602.

Since we find the investigation was fair and impartial and that Claimant's substantive rights were protected we find no basis for overturning the Carrier's decision.

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 4th day of June 1970.