Award No. 18006
Docket No. TE-18432

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

NORFOLK AND WESTERN RAILWAY COMPANY
(Involving employees on lines formerly operated by the Wabash Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC on the Norfolk and Western Railway Company, that:

1. The Agreement between the parties was violated when on January 7, 1969, W. L. Hinsey, Exclusive Agent, Lafayette, Indiana was dismissed from Carrier's service without just cause or the benefit of a fair and impartial investigation.

2. Carrier shall reinstate W. L. Hinsey to the position from which he was removed, with seniority and other rights unimpaired. He shall be paid for all wage loss as the result of Carrier's violative action.

OPINION OF BOARD: Claimant, an Agent at Lafayette, Indiana was given notice to report for investigation on November 12, 1968 to fix responsibility, including Claimant's, in regard to irregularities in the handling of the Lafayette Freight Station accounting concerning: 1. The preparation and transmitting of cash sheet Form AD 413. 2. The handling of company funds and prompt remittance of patron's checks. 3. The handling of uncollected accounts. 4. The condition of files. 5. The handling of order notify bills of lading. 6. The handling of utility bills. 7. The handling of claims. 8. The handling of records and correspondence. 9. The handling of corrections. 10. The delay in presentation of freight bills.

Following the hearing Claimant was advised by letter dated January 17, 1969 from Carrier's Superintendent, M. W. Hallenbeck that he was dismissed from Carrier's service effective same date for failure to properly perform his duties and properly discharge his responsibilities as Agent, Lafayette Freight Station, by failing to ascertain the manner in which the Cashier was performing the duties assigned to the position and to properly supervise and/or see that: (1) Cash Sheet Form AD-413 were promptly and properly prepared and transmitted; (2) Company funds received from patrons were promptly remitted when in some instances checks for sizable amounts were unnecessarily delayed several months prior to remitting; (3) uncollected accounts were prop-

erly handled; (4) Order Notify bills of lading were properly handled; (5) Utility bills were promptly paid; (6) corrections were promptly and properly processed; (7) freight bills were promptly prepared and presented to the patrons.

The Organization contends that Claimant was denied due process because he was never apprised of any charges and not charged with violating any rule; that he was denied a hearing before a fair and impartial hearing officer; that Carrier failed to meet its burden of proving that Claimant was failing in his effort that Cashier Farris did produce quantity and quality of work; that the punishment assessed against Claimant is grossly excessive.

Concerning the Organization's contention of procedural defect because of alleged failure to apprise Claimant of any charge and not charging him with any rule violation, it is seen that the Agreement is silent as to any requirements in regard to the notice to be given an employe under investigation. Further there is no rule in the Agreement making it mandatory that Claimant herein be charged with allegedly violating a certain rule or rules. All that is necessary in regard to said "notice" to an employe under investigation is, as this Board in numerous awards has held, that the notice be so worded so as to fully apprise the employe of the nature of the offense charged in order that he can properly prepare his defense to said charge or charges.

In this instance we feel that the notice given Claimant clearly apprised him of the nature of the offenses charged and that he clearly understood the nature of said complaint which afforded him the necessary opportunity to prepare his defense to said charges.

In the Organization's reply to Carrier's Ex Parte Submission, it raises for the first time the charge that Carrier's hearing officer, Superintendent, M. W. Hallenbeck gave evidence of prejudgment against Claimant at the hearing. This Board has consistently held in numerous awards that charges or contentions not raised on the property cannot be considered by this Board in the determination of a dispute. Therefore, we cannot consider such contention of alleged bias of the hearing officer in deciding this dispute.

The evidence presented at the hearing clearly shows that Claimant was guilty of the charges as specified in Carrier's letter of dismissal to him of January 17, 1969. The Organization in its Ex Parte Submission to this Board, admitted: "However, it is clear that numerous checks found by the Traveling Auditor had not been deposited. Cash sheets had not been rendered on time. There were a number of Order Notify bills of lading that had been surrendered by patrons that had not been canceled or filed. . . ." Thus, it cannot be said that Carrier failed to meet its burden of proving the charges as specified in its letter of dismissal to Claimant. The fact that Claimant may have been overworked and that he did request of Carrier additional help to relieve the heavy work load at said station does not excuse or mitigate his laxity and indifference to the gross neglect showed by the Cashier in carrying out his duties. It was Claimant's direct responsibility to see that the Cashier's position was properly worked and the instructions of Carrier carried out. Failing to do so subjected him to punishment.

The Organization argues that because of Claimant's unblemished record of 38 years of service, the penalty of dismissal from Carrier's service was excessive.

As was said by this Board in Award No. 9045:

> "While this Referee is reluctant to sustain such extreme disciplinary action as dismissal in the case of an employe of long service, it cannot be validly said that on the basis of this record the penalty exceeds the very considerable latitude the Carrier possesses in assessing punishment. We accordingly are not inclined to substitute our judgment on the point for that of Carrier. See Awards 891, 1310, 2621, 2632 and 8711."

For the aforesaid reasons, we are compelled to 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1970.

DISSENT TO AWARD 18006, DOCKET TE-18432

This award represents grave error. It misconstrues, distorts or ignores one of the basic purposes for which this Board was created.

During the debate which preceded adoption of the 1934 amendments to the Railway Labor Act creating this Board, the Carriers argued long and loud within and without the halls of Congress that such a tribunal as was being considered should not be granted authority to tamper with what they apparently considered to be their divine right to hire and fire. In short, they argued that the proposed Board should not be permitted to judge discipline cases.

Their arguments were rejected. But they did not give up. Ever since the Board has been in operation Carriers and their representatives on the Board have contended that the Board should not substitute its judgment for that of the Carriers in discipline cases. To a degree they have been successful. But most referees qualify their agreement with the contention on the ground that it holds true only when there is no evidence of prejudgment, bias, discrimina-