



Award No. 18106

Docket No. CL-18709

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 EMPLOYES**

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6773) that:

(1) Carrier violated the provisions of Rule 28 (a), (h) and (i) of the Schedule for Clerks when on May 9, 1969, it improperly and unjustifiably dismissed Claimant V. P. Smith, following an investigation held on Thursday, May 8, 1969, to determine the facts and fix the responsibility, including Claimants, if any.

(2) The Carrier will now be required to return Claimant to service with all rights and privileges unimpaired.

(3) The Carrier will now be required to compensate Claimant for all time lost as a result of being improperly and unjustifiably dismissed.

(4) In addition to the money amounts claimed herein, the Carrier shall pay Claimant an additional amount of 6% per annum compounded annually on the anniversary date of claim.

OPINION OF BOARD: The Claimant was dismissed from Carrier's service by notice from the Superintendent dated May 9, 1969, for falsifying payroll records on certain specified dates in January, March and April, 1969.

On May 2, 1969, Claimant was advised by the Assistant Superintendent:

"You are hereby notified to report to the office of the Superintendent, 200 Carr Street, St. Louis, Mo., at 9:00 A. M. on Thursday, May 8, 1969, for an investigation to be held to determine the facts and fix the responsibility, including yours, if any, in connection with your alleged failure to properly prepare payroll records for January 8, 17, 24, March 6, 26, 27, 28, April 16 and 23, 1969, resulting in your

securing pay to which you were not entitled while working as Chief Clerk, Luther yard.

If you desire to have a representative and/or witnesses present at the investigation, please arrange for their presence."

The investigation was held on May 8, 1969, with the Assistant Superintendent presiding and acting as interrogating officer.

In its submission to this Board the Petitioner contends that Claimant's procedural rights were violated, alleging (1) that the letter of May 2, 1969, addressed to the Claimant by the Assistant Superintendent, did not charge Claimant with a specific offense; (2) that the investigation was conducted by the Assistant Superintendent and decision rendered by the Superintendent; and (3) that proper appeal was not afforded on the property because a secretary was not present at the appeal hearing to make a transcript of such hearing.

As to the first contention, we find that the notice was adequate as it informed the Claimant of the time, date and location of the hearing and was sufficiently distinct to advise Claimant so that he could properly prepare his defense. The notice met the requirements of the rule. Awards 16344, 16637, 17154, among others.

As to the second contention, we affirm Award 16347 involving the same parties, wherein we held:

"The primary contention of the Petitioner is that Claimant's procedural rights were violated because the decision following the investigation was rendered by other than the official who conducted the investigation, and that Claimant was denied an avenue of appeal guaranteed him by the Agreement

We find no valid basis for such contention. There is nothing in the Agreement that prescribes who shall prefer charges, conduct hearings, or that the officer conducting the hearing must render the decision or assess the discipline. Awards 15714, 14021, 13383, 10015, 12001, 12138, among others.

The fact that the Superintendent rendered the decision did not preclude his acting as the appeals officer (Award 15714). Further, the record indicates that this is the established practice for handling discipline cases on this Carrier."

See also Awards 16602, 15714, 16849 and 13383.

So far as the third contention is concerned, there is nothing in the Agreement that requires the making of a transcript of hearings on appeal, and the Carrier contends that a transcript has never been made of hearings on appeal to the highest officer of the Carrier designated to handle disputes. There is no showing that there were any "statements made a matter of record" on the appeal to the Director of Labor Relations, as referred to in Section (h) of Rule 28.

Based on the record, we find that Claimant's procedural rights were not violated.

In the investigation there was substantial evidence in support of the charge, and, considering the nature of the offense, there is no proper basis for disturbing the action of the Carrier.

The claim will be denied.

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.

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 September 1970.