

Award No. 18468
Docket No. CL-18801

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6807) that:

1. Carrier violated the Clerks' Agreement when, effective December 8, 1969, it assessed discipline of 30 days deferred suspension to Mr. Michael H. Dougherty, Yard Clerk, Lesperance Street, St. Louis, Missouri without first giving the employe a fair and impartial investigation, thereby violating Rule 18 (a) of the Clerks' Agreement.

2. The Carrier shall be required to remove the discipline of 30 days deferred suspension or any reference thereto from Mr. Dougherty's record.

OPINION OF BOARD: The facts in this dispute are not in issue. Claimant held a regular assignment of Yard Clerk, Lesperance Street Yard, St. Louis, Missouri with assigned hours 11:00 P. M. to 7:00 A. M. On December 4, 1969, Agent Williams wrote to Claimant as follows: "Report in my office at 9:00 A. M., Monday, December 8, 1969 for investigation to determine cause of and your responsibility for failing to protect your assignment * * * December 1, 1969." After discussing the investigation with Agent Williams while on duty December 7, 1969, Claimant agreed to plead guilty to the charge, waive his rights to an investigation, and accept the discipline. Claimant, under date December 7, 1969, wrote Agent Williams to this effect. On December 8, 1969, Carrier assessed Claimant discipline of 30-days deferred suspension.

It is not contended that Claimant did not commit the offense or that the discipline was unjust or excessive. The sole issue is whether Claimant was entitled to an investigation pursuant to Rule 18 (a) of the Agreement, irrespective of his admission of guilt and waiver of formal investigation.

Rule 18 (a) of the Agreement provides that an employe shall not be disciplined without first being given a fair and impartial investigation. No where in the Agreement can provisions for a waiver of said investigation be found.

Petitioner contends that since the Agreement is between the Carrier and the Organization, no employe has a right to sign a waiver of investigation and agree with any Carrier officer to accept discipline. Carrier asserts that the right to an investigation is for the personal benefit of the employe and being a personal right, the employe can effectively waive it.

We hold that the Carrier's contention is not without merit. There can be no doubt that the Claimant knew the precise offense with which he was charged. His acknowledgement of guilt was voluntary as was his waiver. It cannot be said that he was deprived of the procedural safeguards inherent in Rule 18 (a). Claimant knew that he committed the offense charged and in order to be relieved of the tensions and uncertainties of an investigation, he declined the benefits of such investigation.

This principle is well established by this Board. In Award 2339 (Carter). this Board held:

"Where an employe voluntarily acknowledges the commission of an offense charged and is assessed a measure of discipline which is fair in relation to the offense committed, any irregularities in the procedure cannot be said to be prejudicial to the rights of the employe * * *"

and, in Fourth Division Award 983 (Ferguson), that Board held:

"Although the Union does have the right to 'police its agreements' * * * that right does not supersede the right of an individual with a long record of fine service to make a deal for himself personally."

It has thus been long settled that an admission of guilt obviates the necessity for a hearing.

Nor does the record support Petitioner's assertion that the waiver was secured as a result of coercion. The mere appearance of Agent Williams at Lesperance Street Yard, certainly does not, per se, constitute coercion.

The Awards cited by Petitioner support the principle that an employe, covered by an Agreement, collectively entered into by the Organization and the Employer, cannot enter into a separate agreement or contract with the employer that would in any manner change or modify, or is at variance with the rules, conditions, rates of pay or terms of the Agreement. We concur in the reasoning upon which these Awards were decided, but we submit they have no application to the issue before us. The purpose of Rule 18 (a) is to ascertain the guilt or innocence of the employe charged with an offense. When this issue is no longer a point of contention, the necessity for an investigation ceases to exist. Since Claimant acknowledged responsibility for the offense charged, the act of holding an investigation would amount to an exercise in futility. It is nowhere alleged that the result would have been different if an investigation had been held.

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

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1971.