

Award No. 18791
Docket No. TE-19190

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

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 (formerly Wabash Railroad), that:

1. Carrier violated the Agreement between the parties when it arbitrarily, capriciously and in abuse of discretion, suspended J. P. Reid, Agent, Taylorville, Illinois from service for thirty days without just cause.
2. Carrier shall, as a result, compensate J. P. Reid for wages lost during the improper and wrongful suspension, and remove the discipline from his record.

CARRIER DOCKET: 101.22

OPINION OF BOARD: This is a discipline case brought to this Board on Claimant's allegations that 1) the notice of investigation lacked sufficiency. 2) That the investigation was not held properly and 3) That there was not sufficient evidence produced to substantiate the charge against the Claimant.

At the outset let us state that the notice was not defective so as to warrant the finding of a procedural defect. Further, the record does not reveal that the investigation hearing was held in such a manner so that Claimant was deprived of a fair and impartial hearing. The claim cannot be sustained on these basis.

There is no question but that there was a failure to issue constructive placement notices at the Station under the Claimant's supervision and that this resulted in a substantial economic loss to the Carrier. There is substantial question however as to whether the responsibility for this loss can be placed entirely on the Claimant. The Claimant was short handed at the position. He had notified the Carrier in writing of the precarious situation that existed at the station. By the admission of the Carrier's officer the help that was sent to the station was not qualified. On the other hand the Claimant testified to not properly checking the demurrage records. He testified to operating on the assumption that there were enough credits to offset

any debits which assumption later proved to be ill founded. We cannot say that the Claimant is entirely without blame in the matter.

In that we have found that there was some evidence adduced at the investigation which will support the charge and because the 30 days suspension does not appear to be excessive we will 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 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October 1971.

DISSENT TO AWARD 18791, DOCKET TE-19190

This award is seriously in error because the majority based its conclusion upon a false premise.

The majority says the case was brought to this Board on Claimant's three-fold allegation that the notice of investigation was insufficient; that the investigation was improperly held; and that there was insufficient evidence to substantiate the charge.

The Statement of Claim, however, which is the formal basis upon which the case was brought to the Board, alleges a violation of the agreement when Carrier suspended the claimant for thirty days "**without just cause**".

The allegations recited by the majority were made, but were not the only contentions and facts cited by the petitioner as support for its basic claim that Carrier's action was "**without just cause**."

As pointed out to the Referee during panel argument, the evidence left no doubt that a Carrier officer, a supervisor of the Claimant, was at the station during the crucial period and was fully aware of the fact that the constructive placement notices were not being timely issued, as well as the

opinion of the Claimant that credits being accrued would be sufficient to offset the debits. The testimony of Mr. Walker, at page 7 of the transcript, is unmistakable on this point.

Carrier's knowledge of the entire situation at the time the events were occurring, and its failure to indicate any disagreement with the Claimant's handling certainly must amount to either acquiescence in that handling or a waiver of any contrary view.

Under such circumstances the Carrier's subsequent assessment of a fine of a month's pay can only be construed as "without just cause", a course of procedure proscribed by the agreement.

The contrary conclusion of the majority, together with its improper assessment of the cause of action constitutes palpable error, and I dissent.

J. C. FLETCHER
Labor Member