

Award No. 19062
Docket No. CL-19359

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

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

**BUFFALO CREEK RAILROAD - ERIE LACKAWANNA
RAILWAY COMPANY AND LEHIGH VALLEY RAILROAD
COMPANY (John F. Nash and Robert C. Haldeman, Trustees)
LESSEES**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6990) that:

(a) The Carrier violated the current Agreement between the parties, when after Hearing and Investigation held on July 24, 1970, it dismissed Mr. R. Procknal from service without just cause, and,

(b) Carrier's action in this case is arbitrary, capricious, and unwarranted.

(c) The evidence adduced at the Hearing and Investigation held on July 24, 1970, in the office of Mr. C. M. Johnke, Supt., Buffalo Creek Railroad Company, does not, and did not, warrant dismissal from the service of Mr. R. Procknal.

(d) The Carrier shall now be required to restore Mr. R. Procknal, to service with all rights unimpaired and compensate him for all wage loss from July 24, 1970, when he was suspended from service pending Investigation and Hearing, until restored to service with all rights unimpaired; such rights to include, paid for life insurance, and hospital, medical and surgical insurance for himself and dependents, Travelers Insurance Company.

OPINION OF BOARD: Petitioner contends that the discipline assessed by Carrier was arbitrary and capricious in that the evidence adduced at the hearing does not warrant Carrier's dismissal of Claimant.

The hearing was held in the Superintendent's office. Present were G. Baier, D. Bystrak, General Chairman and District Chairman of the Organization respectively, R. O'Connor, General Chairman of another labor organiza-

tion, the Claimant, the Superintendent, and the person who took the notes. There was no hearing officer as such. The Superintendent is the person to whom the Claimant was alleged to have been insubordinate. Thus he was Claimant's accuser. He was also the interrogator. It was he who passed judgment on Claimant and it was to him that all appeals were directed. Thus we find the Superintendent occupied the roles of accuser, prosecutor, judge and jury.

The letter of July 13, 1970 from the Superintendent to the Claimant is significant in that it clearly shows that the hearing was not to determine if Claimant was insubordinate but merely to determine why. The letter is reproduced below:

"Pursuant to your current agreement, Rule 26, you are hereby instructed to appear for hearing and investigation in the Superintendent's Office, Wednesday, July 15, 1970 at 10:00 A. M. to determine why you were insubordinate and failed to perform your assigned duties from June 29, 1970 to July 10, 1970, and again on July 13, 1970, when you were issued written instructions to perform assigned duties on Position 4.

You may have such witness or representative as you may choose."

With that state of mind and occupying all the positions as indicated above it can hardly be said that Claimant received a fair trial and we so find. As a fair and impartial hearing is essential in discipline case we find that under the circumstances herein, there is merit to Petitioner's contention that Carrier acted arbitrarily and capriciously. Awards 9832, 8088, 10410, 8431.

As we have found that Claimant did not get a fair and impartial hearing as required we shall sustain the Claim.

In view of our findings it is unnecessary to discuss the evidence adduced at the hearing.

Carrier raises a question as to the inclusion of certain welfare and insurance benefits in the Claim. This part of the Claim is denied not because these matters have not been found by the Courts to come within the purview of "wages, hours and working conditions" but merely because they are not referred to in the agreement.

The back pay to be paid to Claimant shall be in accordance with Rule 30 of the Agreement with an appropriate deduction for wages earned elsewhere. (Chicago, Burlington & Quincy R. Co. vs. Babcock, 204 U.S. 585, 598.)

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;

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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 1, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated in accordance with the Opinion.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March 1972.