

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19558  
Docket Number SG-19786

I. M. Lieberman, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Railroad Signalmen  
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Grand Trunk Western Railroad Company that:

(a) Carrier violated Rule fifty-five (55) of the Signalmen's Agreement, which states that any employee with more than sixty (60) days' service will not be disciplined or dismissed without a fair and impartial hearing to be held within ten (10) days from the date charged with the offense.

(b) Mr. Decker was not given a fair hearing due to the fact that a Company official conducted the hearing and was not in position to be fair and impartial.

(c) Mr. Stonehouse, who conducted the hearing, also submitted the evidence against Mr. Decker and, as so, acted in a dual capacity, again violating Rule fifty-five (55).

(d) The entire hearing was in violation of the Signalmen's Agreement as Mr. Decker was asked to testify against himself, and hearing was not held within ten (10) days of dismissal.

(e) Carrier should now be required to reinstate Mr. Decker to his full capacity as Signal Inspector, and compensate him in full for loss of time and wages from the time he was removed from service until he is reinstated, without loss of any benefits such as insurance, vacation time, and any other rights he would have been entitled to if he had not been removed from service. (Carrier's File: 4425-666)

OPINION OF BOARD: Claimant, a Signal Inspector, was assigned a Company vehicle which he operated between his home and his work site each day. His regular working hours were from 8:00 A.M. to 5:00 P.M. On December 23, 1970, Chief Engineer Hotton received information from the County Sheriff's Department that Claimant had been arrested at 5:45 P.M. on December 22, 1970, while driving a Company vehicle, on the charge of "Driving While Under the Influence of Liquor." Claimant was taken out of service by telegram dated December 23, 1970 and a letter confirming the telegram with the same date.

Prior to setting the date for the investigation, the Chief Engineer contacted the General Chairman and requested an extension of the time limit to January 11, 1971 because of the holiday season. The General Chairman concurred in this request and a formal notice of investigation, dated December 29, 1970, was sent to Claimant. The last paragraph of that notice reads as follows:

"Under normal circumstances the date of the hearing would be set within the ten (10) days of the date you were taken out of service (i.e., December 24); however because of several legal holidays occurring within the 10 days following December 24 and because certain evidence will not be available, the date-time of the hearing is set at 1000 hours, January 11, 1971...."

Following the investigation held on January 11, 1971 Claimant was discharged by letter dated January 19, 1971.

The Organization bases its claim and arguments on alleged violations of Rule 55 of the current Agreement by the Carrier. Rule 55 reads:

"Rule 55 - Discipline. An employee who has been in the service more than sixty (60) days will not be disciplined or dismissed without a fair and impartial hearing, at which he may be assisted by a duly accredited representative. He may, however, be held out of service pending such hearing, which will be held within ten (10) days from the date when charged with the offense or held from service. Prior to the investigation the employee shall be apprised in writing of the charge sufficiently in advance of the time set for investigation to permit his having reasonable opportunity to secure the presence of necessary witnesses.

An employee dissatisfied with a decision will have the right to appeal in succession up to and including the highest official designated by the Management to handle such cases, and each official must render a decision within fifteen (15) days after such appeal, provided notice of such appeal is given the next higher official with copy to the official rendering the decision, within ten (10) days thereafter. The right of an employee to be assisted by the committee or a duly accredited representative is recognized.

An employee will be given a letter stating the cause of discipline. A copy of all statements taken in writing at the hearing or on appeal will be furnished on request to the employee or his representative.

"If the charge against the employee is not sustained, it will be stricken from the record. If, by reason of such unsustained charge, the employee has been removed from the position held, reinstatement will be made and he will be compensated for wage loss, if any, suffered by him."

The Organization has based its contentions entirely on procedural grounds and did not take a position on the merits of the dispute.

At the outset of the investigation, the representative of the Claimant objected to proceeding first because he stated that the Carrier had prejudged the case by taking Claimant out of service prior to the investigation and further that the hearing should not go forward since the Organization's representative was misled as to the reasons for delaying the hearing beyond the ten day period called for in Rule 55. On this last contention, the Organization argues that the letter notice of investigation quoted above shows that the Organization was misled as to the reasons for the postponement. We do not concur. Further, Rule 55 clearly provides that an employee may be held out of service pending an investigation, which leads us to reject the argument that there was a pre-determination of guilt.

The Petitioner further argues that Claimant was not given a fair hearing "due to the fact that a Company official conducted the hearing and was not in a position to be fair and impartial". By both contractual terms and long established past practice the Carrier may designate a supervisor or other management official to conduct a disciplinary hearing. In Award 16347 we said:

"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."

Although it may be argued that the entire disciplinary process in this industry is anachronistic, this Board is not empowered to rewrite the Rules.

The Organization states that the hearing officer submitted evidence against complainant and in so doing acted in a dual capacity in violation of Rule 55. The transcript of the investigation reveals that the hearing officer handed Complainant documents from the Sheriff's office and asked him to read them. These documents were made part of the record after testimony by the Chief Engineer. In Award 16308 we said "Numerous awards of this Board have held that written statements of witnesses not present at an investigation are admissible in the absence of contractual prohibition." Although it would have been more appropriate had the Chief Engineer rather than the hearing officer first brought the documents forth, we do not view this as prejudicing the rights of Claimant.

Petitioner argues further that the entire procedure was in violation of the Agreement since Claimant was asked to testify against himself. The Organization's representative at the hearing was in error when he refused to permit Claimant to respond to questions relating to the alleged offense. We have stated in a number of similar cases that the rules of evidence in criminal proceedings are not applicable to disciplinary investigations. In Award 4749 we said: "Employees charged with rule violations who avoid answers to questions touching upon the claimed offense, subject themselves to inferences that the replies if made would have been favorable to the Carrier". At a hearing of this kind the Carrier may properly examine the accused concerning every point bearing upon his innocence or guilt, whether or not he testifies in his own behalf. (Award 2945).

Careful study of the transcript does not persuade us that the hearing was arbitrary or biased; Claimant was not deprived of due process. He had vigorous representation and could have presented a case had he so desired. There was substantial evidence in support of Carrier's position and the penalty imposed was not improper. As we have said before (Award 2945) "Truth and not technicality should be the controlling factor in making decisions of this kind.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: E. A. Killam  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1973.