

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19698
Docket Number CL-19875

Benjamin Rubenstein, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
PARTIES TO DISPUTE: (
(Southern Pacific Transportation **Company**
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (CL-7194)
that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement between the parties when on November 4, 1971 **it** dismissed Mr. George Hopper from service following investigation notwithstanding it failed to comply with the terms **of** Rule 47 thereof when citing him **therefor** and the testimony given therein did **not** justify punitive action; and,

(b) The Southern Pacific Transportation Company shall now be required to reinstate **Mr.** George Hopper to service with seniority and **all** other rights unimpaired and to allow him eight hours' compensation at rate of Assistant Chief Clerk Position No. 8 November 4, 1971 and each date thereafter at applicable rate thereof until restored to service with seniority and all other rights unimpaired; and,

(c) For any month in which claim is made for compensation in behalf of Claimant, Carrier shall make premium payments in his behalf in appropriate amounts required under Travelers Group Policy Contract GA-23000 as amended for all benefits described therein.

OPINION OF BOARD: Claimant, who has been employed by the Carrier for a period of about forty years, was discharged on November 4, 1971, after **a** hearing before a Hearing Officer of the Carrier, pursuant to **a** Notice of Hearing dated and served on October 23, 1971.

The Notice alleged, that claimant violated provisions of:

1. Rule 801 reading in part:

"Employees will not be retained in the service who are... indifferent to duty,... quarrelsome...."

2. Rule 804, prohibiting hostility, misconduct or **wilful** disregard or negligence.

3. Rule 810, providing that employees must not absent themselves from their employment without proper authority.

The hearing was scheduled for October 25 and after some **adjourn-**men& was held on November 4, 1971. The claimant was found guilty of the charges and dismissed from his job.

He contends that:

1. Carrier violated the provisions of Rule 47, providing for Notice to employees about to be brought up on charges.
2. The testimony adduced at the hearing reveals that claimant was not guilty of the charges, and
3. Claimant was persecuted because he voiced objection to the fact the Station Supervisor countermanded and changed his orders dispatching bus drivers.

The facts preceding the charges are:

On October 22, 1971 a discussion took place between the claimant and his supervisor in connection with a delay in dispatching some cars. Claimant denied that there was a delay, and stated that he was looking for some buckets to ship. He objected to his supervisor's countermanding some orders that he previously gave for dispatching the cars. The Supervisor called in **another** supervisor to be present during the discussion. The claimant, fearing that this was an unofficial hearing to prepare charges against him, refused to participate further and demanded a leave pursuant to Rule 39(b), providing that members of General and Local **Committees** representing members will be granted leave of absence without unnecessary delay. His request **was** denied, whereupon he left his job. (Rule 39 has since been amended and **39(b)** is now 39(f)).

Did the Notice of Charges comply with the provisions of the Agreement?

1. Rule 47 of the Agreement provides:

"CHARGES AND WITNESSES.

"At a reasonable time prior to the investigation, the employee shall be given written Notice of the precise charges against him and given **reasonable** opportunity to secure the presence of necessary witnesses."

The Rule does not specify the number of days it must be **served** before the hearing. **The** main thrust of the Rule is to give the employee a reasonable opportunity to secure the presence of necessary witnesses. In the instant case, although only two days notice was given, the hearing was adjourned and finally held on November 4, about ten days after the notice was served. This, in the

opinion of the Board was sufficient time for the employee to secure the presence of his witnesses. In fact, at the hearing he was asked whether he **was** ready to proceed, and he answered in the affirmative. He was given an opportunity for a further adjournment which he refused.

The time provisions of the Rule have been satisfied and the objection of the Claimant on that basis must be rejected.

2. The Notice, in its first paragraph, states, that **the** purpose of the investigation is,

"to develop the facts and place responsibility, if any, in connection with your, allegedly, being indifferent to duty, quarrelsome, discourteous, and absenting yourself from your employment without proper authority while working as assistant chief **clerk...October 22, 1971.**"

It then sets forth the various Rules which claimant allegedly violated.

The Notice was dated only two days after the occurrence of October 22, 1971. **It** refers to that occurrence and no other. Surely, the Claimant has not forgotten what happened two days before. The notice is clear and precise as to the time **of** occurrence, **the** Violations Claimant was charged with and even **set** forth the specific Rules violated. The Claimant knew, **or** should have known, whether he was or was not indifferent to duty; whether he was quarrelsome and discourteous; and whether he absented himself from employment without proper authority.

It is the opinion of the Board that the Notice **was** in **all** respects proper and in conformity with Rule 47.

The Claimant asks the Board to find that the testimony at the hearing reveals that he was not guilty of the charges. It is, essentially, a request that the Board substitute its judgment for that of the Carrier in evaluating the evidence. (**Devine** 18784). This, the Board can not do, as long **as** there is substantial evidence to sustain the charges. The policy of this Board involving discipline cases, is so well **established** as to be **uncontroverted**. This Board will not weigh the evidence where it is merely contradictory. (O'Brien-18550)

There is substantial evidence that on the evening in question, the claimant did quarrel with his supervisor, that he failed to obey the supervisor's orders and argued with the supervisor as to what is more important. Nor is there any question that Claimant left his employment without authority, invoking a Rule established for the benefit of the **Organization, to** his own purposes.

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

The Carrier did not violate the Agreement.

A WA I! D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1973.