

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19935
Docket Number CL-19920

Benjamin Rubenstein, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
PARTIES TO DISPUTE: (
(George P. Baker, Richard C. Bond, **Jervis Langdon, Jr.**,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7177)
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of 14 days suspension, later reduced to 10 days, on J. A. Murter, Extra Clerk, **Edgemoor** Yard, Edgemoor, Del.

(b) Claimant J. A. **Murter's** record be cleared of the charges brought against him.

(c) Claimant J. A. Murter now be compensated for the wage loss sustained during the period out of service, plus interest at the rate of 6% per annum, compounded daily.

OPINION OF BOARD: Claimant, an employee of six years seniority, with an unblemished record, as Extra Yard Clerk, was, on May 20, 1971, assigned as Extra Clerk at the Transportation Center, Edgemoor, Delaware, and was called to fill a vacancy in a **Flexowriter** position. His tour of duty was from 2 p.m. to 10 p.m. At about 8 p.m. of that day, claimant became ill. He advised a clerk of his illness and left, not completing his trick.

Next day, he was charged with a violation of Rule T of Carrier's Rules and was given a hearing on the charges.

After completion of the hearing, the claimant was given a fourteen days disciplinary suspension, which was subsequently reduced to ten days. The hearing was conducted by the Supervisory Agent, who brought the charges against claimant, but the decision was rendered by the Assistant Superintendent of Stations.

Claimant **contends** that: 1) He did not have a fair and impartial investigation, because the same person who prepared the charge, also acted as Hearing Officer and imposer of discipline; 2) The discipline was not justified; 3) his record should be cleared and he be compensated for all wage loss, plus interest at 6% per annum, compounded daily.

Rule 6-A-1 of the Agreement between the parties herein, provides, in part:

"(a) An employee **who** has been in the service more than 60 calendar days or when application has been formally approved, shall not be disciplined or dismissed without a fair and impartial investigation."

Although an investigation of a violation of a rule in labor relations, is **not** limited to strict Rules of Evidence, yet it is akin to a trial, and the Hearing Officer occupies the position of a Judge, who must be impartial and capable of rendering a fair and unbiased decision. It is inconceivable for a Judge, in a court of justice, to be the prosecutor and the judge at the same time. Having acted as prosecutor, he cannot be expected to also act as impartial judge. Such a procedure would be subject to reversal, on appeal. Yet, in the Railroad industry, this procedure has been tolerated and approved for many years and we shall not reverse it here.

However, in the instant case, the Carrier went much further than having the prosecutor act as judge. It divided the function of the hearing officer into two personalities -- one to hear the case and another one to decide it. On this issue, we held in numerous awards that the separation of the powers and duties of the hearing officer, violates the concept of a "fair and **impartial** investigation." (Award Nos. 6087, 7088, 8020, 14031, 17156, 17901).

In Award Number 6087, we said:

"Where, as here, the decision is not rendered by the official who conducted the investigation, but is made by the official who preferred the charges against the employee...., it cannot reasonably be said that the employee has been afforded an investigation and decision in compliance with the rule."

And, in Award Number 8020, we said:

"The plain meaning of such a rule is: that the official **who** conducted the investigation, heard the evidence and saw the witnesses will evaluate the evidence and decide whether the employee was guilty or innocent of the charge."

We adhere to the opinions in the above awards. The manner in which the investigation was held and decision arrived at was in violation of Rule 6-A-1.

Having reached the above conclusions, there is no need to **discuss** the question of evidence or extent of the discipline.

As to the question of interest, we shall adhere to the prevailing opinions that the contract does not provide for such remedies. Disputes affecting violations of contractual provisions of labor relations agreements are not comparable to violations of the National Labor Relations Act. If interest is intended, the Agreement should so provide,

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

Carrier violated the provisions of Rule 6-A-1.

A W A R D

Claim is sustained as provided in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauloe
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

DISSENT OF CARRIER MEMBERS' TO AWARD NO, 19935
DOCKET No. CL-19920

This Award is contrary to many sound Awards of this Board insofar as the investigation on the property is concerned. The manner in which the investigation was held and the decision arrived at was not in violation of any Rules of the Agreement.

In this connection, many Awards were cited, but the Neutral chose to ignore them. We dissent.

H. F. M. Braidwood
H. F. M. Braidwood

P. C. Carter
P. C. Carter

W. B. Jones
W. B. Jones

G. L. Naylor
G. L. Naylor

G. M. Youhn
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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

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(b) Claimant **J. A. Murter's** record be cleared of the charges brought against him.

(c) Claimant **J. A. Murter** now be compensated for ~~the~~ wage loss sustained during the period out of service, plus interest at ~~the~~ rate of 6% per annum, compounded daily.

OPINION OF BOARD: Claimant, an employee of six years seniority, with an unblemished record, as Extra Yard Clerk, was, on May 20, 1971, assigned as Extra Clerk at the Transportation Center, Edgemoor, Delaware, and was called to fill a vacancy in a **Flexowriter** position. His tour of duty was from 2 p.m. to 10 p.m. At about 8 p.m. of that day, claimant became ill. He advised a clerk of his illness and left, not completing his trick.

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After completion of the hearing, the claimant was given a fourteen days disciplinary suspension, which was subsequently reduced to ten days. The hearing was conducted by the Supervisory Agent, who brought the charges against claimant, but the decision was rendered by the Assistant Superintendent of Stations.

Claimant contends that: 1) He did not have a fair and impartial **in-**vestigation, because the same person who prepared the charge, also acted as Hearing Officer and imposer of discipline; 2) The discipline was not justified; 3) his record should be cleared and he be compensated for all wage loss, plus interest at 6% per annum, compounded daily.

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However, in the instant case, the Carrier went much further than having the prosecutor act as judge. It divided the function of the hearing officer into two personalities -- one to hear the case and another one to decide it. On this issue, we held in numerous awards that the separation of the powers and duties of the hearing officer, violates the concept of a "fair and **impartial** investigation." (Award Nos. 6087, 7088, 8020, 14031, 17156, 17901).

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"The plain meaning of such a rule is: that **the** official who conducted the investigation, heard the evidence and saw the witnesses will evaluate the evidence and decide whether the employee was guilty or innocent of the charge."

We adhere to the opinions in the above awards. The manner in which the investigation was held and decision arrived at was in violation of Rule **6-A-1**.

Having reached the above conclusions, there is no need to discuss the question of evidence or extent of the discipline.

As **to** the question of interest, we shall adhere to the **prevailing** opinions that the contract does not provide for such remedies. Disputes affecting violations of contractual provisions of labor relations agreements are not comparable to violations of the National Labor Relations Act. If interest is intended, the Agreement should so provide.

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

Carrier **violated** the provisions of Rule 6-A-1.

A W A R D

Claim is **sustained** as provided in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauloe
Executive Secretary


Dated at Chicago, Illinois, this 7th day of September 1973.


DISSENT OF CARRIER MEMBERS' TO AWARD NO. 19935
DOCKET NO. CL-19920

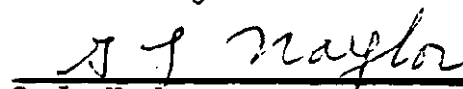
This Award is contrary to many sound Awards of this Board insofar as the **investigation** on the property is concerned. The **manner** in which **the** investigation was held and the decision arrived at **was** not in **violation** of any Rules of the **Agreement**.

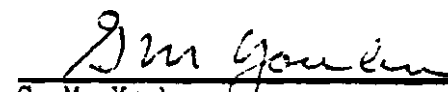
In this connection, **many** Awards were cited, but the Neutral. chose to ignore them. We dissent.


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