

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20182

Docket Number MS-20067

Irwin M. Lieberman, Referee

(Richard H. Heath

PARTIES TO DISPUTE: (

(Erie Lackawanna Railway Company

STATEMENT OF CLAIM: This is to serve notice as required by the Rules of Procedure of the National Railroad Adjustment Board of my **intention** to file an **ex parte** submission thirty days from the date of this notice covering an unadjusted dispute between me and the Erie Lackawanna Railway Company involving the question:

Whether my discharge from employment by the Erie Lackawanna Railway Company was proper, it being my contention that the discharge was based on a conspiracy between the Erie Lackawanna Railway Company and the Brotherhood of Maintenance of Way Employees to terminate my employment and it being further contended that said discharge was void and of no effect because of the fact that the undersigned had been previously discharged from employment by the Erie Lackawanna Railway Company and for the further reason that the **discharge** was not justified by the evidence.

OPINION OF BOARD: Claimant herein, a foreman, was charged with a violation of Rule O-1 of the Rules of the Operating Department for allegedly improperly reporting on the payroll, and being paid for, time not actually worked, for November 19, 1971. Rule O-1 states:

"Employees must not absent themselves from duty nor provide a substitute without proper authority. Time must not be **shown on time** slip, time book or payroll, except for work actually performed by the person named."

Following a hearing held on December 22, 1971, Claimant was found guilty by **Carrier** and discharged effective January 6, 1972. No contentions with respect to due process were raised and Carrier waived the various procedural deficiencies in the steps followed by Claimant in the appeal procedure.

Claimant contended that the employer and the union had conspired to cause termination of his employment, but presented no **evidence** in support of this argument. He further argued that he had no assistance from his Union representative at the hearing, that no consideration was given to his personal difficulties which explained the

payroll error, and finally that the entire matter was moot since the union had caused his prior discharge for non payment of dues.

We note that Claimant specifically declined union representation at the hearing. The record of the hearing reveals that **Claimant** had improperly reported himself as working on November 19, 1971 and had accepted payment for that day; the same day his wife gave birth to a child. However, the record also indicates that he **was** responsible for making out payroll sheets at the end of the month as well as maintaining daily time records for his gang and himself. He also had just been disciplined for an identical offense **committed** in October 1971. With respect to the **mootness** argument, the facts are that Claimant was dismissed from service on December 28, 1971 for violation of the Union Shop Agreement but that **effectuation** of the dismissal was stayed by his appeal under that Agreement; the final decision to terminate him was rendered by an Arbitration Award dated July 21, 1972.

This Board's review of disciplinary action by a Carrier is restricted to first a determination of whether or not there was **sufficient** probative evidence adduced at the hearing to support the conclusion of guilt, and secondly whether the discipline imposed by the Carrier was arbitrary, capricious or **discriminatory**. In this dispute the record is clear that the finding of guilt was supported by **uncontroverted** evidence and that the discipline imposed, under all the circumstances, was not unwarranted. The Claim **must** be denied.

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: A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1974.