

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20331  
Docket Number CL-20195

Dana E. Eischen, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employees

PARTIES TO DISPUTE: (

(George P. Baker, Richard C. Bond, and Jervis Langdon, Jr.,  
( Trustees of the Property of Penn Central Transportation  
( Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7292)  
that :

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on E. R. Draper, Crew Dispatcher, Collinwood Yard, Cleveland, Ohio, Western Region.

(b) Claimant E. R. Draper's record be cleared of the charges brought against him on March 9, 1972.

(c) Claimant E. R. Draper be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained during the period out of service, plus interest at 6% per annum compounded daily.

OPINION OF BOARD: Claimant, a regularly scheduled crew dispatcher on the 7:00 a.m. to 3:00 p.m. shift at Carrier's Collinwood Yard, was held out of service on March 8, 1972 and dismissed from service effective March 27, 1972 following an investigative hearing into an occurrence of March 5, 1972. The essential facts out of which the instant claim arose are not in serious dispute.

On Sunday, March 5, 1972, Claimant reported for his regularly scheduled assignment at 7:00 a.m. In addition to his regular assignment he was scheduled also to work the second trick from 3:00 p.m. to 11:00 p.m. By his own admission, Claimant was under the influence of an alcoholic beverage while on duty on the day in question. Unrefuted testimony of the other crew dispatcher on duty March 5, 1972 shows that Claimant when he reported for the first trick exuded an alcoholic aroma, was unable to perform his work and, accordingly, did not commence his assignment until 11:30 a.m. Moreover, Claimant was in possession of two revolvers which he admitted discharging while on duty during his second trick between 3:00 and 11:00 p.m. This occurrence was reported to the Penn Central Police Department whose officers investigated the incident.

Claimant subsequently was held out of service and served with a Notice of Trial or Investigation to be held on March 13, 1972 in connection with the following:

"Failure to properly **perform** your duties as Crew Dispatcher on job G-23 on Sunday, **March 5, 1972** whereby you failed to conduct yourself **in** such a **manner** as not to bring discredit upon the **Company**, acting with hostility **and** disregard for Company interest **and consumed** and had **in** your possession alcoholic **beverage** while on duty as Crew Dispatcher."

The record shows that **Claimant** attended the **investigation** on **March 13, 1972** and was accompanied by a representative of the Organization, Petitioner herein. At the hearing, Claimant asserted the adequacy of the notice and opportunity to be heard, and forthwith stated on the record that he wished to "plead no contest" to the specifications listed in the Notice of Trial or Investigation. After **affirmatively** admitting the details in connection with the **discharge** of firearms and influence of alcohol occurrence on March 5, 1972, **Claimant** through his representative urged Carrier to consider his prior good service record in assessing his liability.

On March 27, 1972 **Claimant** was advised of his dismissal **from** service for the offenses occurring **March 5, 1972**. Subsequent appeals to Carrier for change in the discipline assessed were denied and the claim **ultimately** was **appealed** to **our** Board.

Petitioner contends that **Claimant** was effectively denied procedural due process on the grounds that the Notice **of Trial** or Investigation was confusing **and** imprecise **and** that the investigation was improperly **denominated** a "**trial**" at its outset and later correctly **labeled** an "investigation" by the hearing officer. Moreover, Petitioner maintains that even if **arguendo** the investigative hearing was **procedurally** sound and fairly conducted the assessment **of** discharge in this **case** was **excessive**, unreasonable **and** an abuse of discretion by Carrier.

Carrier on the other **hand** urges that. the **record shows** adequate notice, **procedural** regularity and **full** compliance with due process. Moreover, Carrier points out that Claimant has admitted **on the record** serious infractions of rules regulating safe and proper conduct **while** on **duty**. In these circumstances **Carrier** maintains **that its** decision to **discharge** Claimant can not be construed as an unreasonable exercise of its undoubted authority to discipline **employees** for offenses while on duty.

Careful **analysis** of the record **reveals** that the Notice was sufficiently explicit **to advise Claimant** of the subject of the investigation and that his conduct was the focus of investigative inquiry. There is nothing in the record to suggest that Claimant was in any manner misled or prejudiced in his defense by the form of notice. In our **judgment** the Notice **complies** with the **requirements** of Rule 6-A-1 of the **Agreement** between the parties that **an** employee be given "written notice in advance of the investigation of the exact offense **charged**".

Nor can Claimant find comfort in the Petitioner's allegation of procedural irregularity incident to the hearing officer's initial denomination of the hearing on the property as a "trial". The record shows that almost immediately upon entering the prior reference in the record, the hearing officer corrected himself and the record retrospectively by properly captioning that hearing as an "investigation". This is not to say that Petitioner is incorrect in asserting that there is more than a mere semantic difference between a "trial" and an "investigation" and that the proper procedure on the property is the latter. However, in looking beyond the form to the substance of the instant proceedings the Petitioner here attacks, we find that aside from the initial mislabeling the hearing was conducted as a fair and impartial investigation, consistent with the requirements of the Agreement.

Petitioner urges that the ultimate penalty of dismissal was unreasonably excessive and that a lesser penalty is indicated from the record. We have noted Claimant's apparently unblemished record prior to the instant offense. However, the record shows that Carrier's findings are supported by substantial evidence including Claimant's admissions; and that none of Claimant's\* procedural or substantive rights were violated. In these circumstances and considering the nature of the offenses we cannot say that Carrier acted arbitrarily, unreasonably or capriciously in assessing discharge. Therefore we find no valid basis for substituting our judgment for the disciplinary action taken by Carrier and the claim must be denied. See Awards 12438, 12738, 13674, 15574, 19433 et al.

**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.

Award Number 20331  
Docket Number CL-20195

Page 4

A W A R D

**Claim** denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A.W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.