NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20692
Docket Number CL-20699

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7552) that:

1. The Carrier violated the provisions of Rule 24 of the existing Agreement between the parties when it failed and refused to compensate Mail Department employee Mr. C. L. Sherwood for all time lost as a result of his being withheld from service pending an investigation on charges not proven nor investigation held.

2. That Carrier shall now be required to clear his record and compensate Claimant for each work day of his assignment beginning March 3, 1973, to the date restored to service of April 27, 1973, at the pro rata rate, and

3. The Carrier shall be required to compensate Claimant for each rest day and daily overtime at the time and one half rate for each date he could have worked during the period, consistent with his seniority standing relative to other employes.

4. That the Carrier be required to pay Claimant interest at the rate of 7% compounded annually beginning with the date that such monies were *improperly* withheld.

OPINION OF BOARD: Claimant was withheld from service on March 3, 1973, pending an investigation, due to his having been arrested by the Kansas City Police on a morals charge. The investigation was postponed twice, and on April 26, 1973 the charges against Claimant in Municipal Court were dismissed. Claimant was restored to service on April 27, 1973, the notice of investigation was withdrawn, but Claimant was not paid for the time lost as a result of his being withheld from service.

Petitioner contends that although Carrier has the right to withhold an employee from service pending an investigation, it doee so at its own risk and faces the possibility of liability if there is a failure in sustaining the charges. It is argued that Carrier, by denying compensation for the time out of service, is thus assessing discipline without an investigation, *contra-y to* the Agreement and due process. The following rules, in pertinent part, are cited by Petitioner:

"Rule 19 Investigation

An employee who has been in service more than sixty (60) days, ...shall not be disciplined or dismissed without investigation,.... He may, however, be held out of service pending such investigation, ...

Rule 24 Exoneration

(a) If the final decision decrees that charges sgainst the employe were not sustained, the record shall be cleared of the charges; if suspended or dismissed, the employe shall be reinstated and paid for all time lost, less amount earned elsewhere during suspension or dismissal."

The Carrier asserts that it should not have been required to' retain Claimant in service when a morals charge, such as that herein, was involved; his suspension was not because of his conduct, per se, but for "the effect such conduct has on the employer and other employes." Carrier also argues that the dismissal of the charge against Claimant by the civil authorities &es not mean that he was Innocent; such dismissal does not bar the Carrier from disciplinary action. Carrier also cited another dispute, quite similar, in which the Organization had agreed to a reinstatement without back pay after criminal charges were dropped. In its rebuttal Carrier stated: "The discipline assessed by Carrier in returning Claimant to duty with loss of pay was very minimal, to say the least. There was no reason to believe that the organization would not accept the Carrier's handling in this dispute as being proper, because it had accepted such in the identical case."

Carrier cited two cases in which this Board held that acquittal by a court is not a bar to disciplinary action by the Carrier. We certainly affirm that rationale and note that in Award 12322, cited by Carrier, after charges were dropped or dismissed by the Police, Carrier held an investigation and the employe was subsequently dismissed. The problem is that in the instant dispute, after charges were dismissed by the court, no investigation was held and yet Claimant was effectively and severely disciplined by loss of Income for almost two months. Carrier has admitted that it did in fact discipline Claimant (see quote supra), in spite of the clear language of Rule 19, without an investigation. The unambiguous language of the Agreement is controlling regardless of prior agreements to ignore its provisions in particular cases. The type of discipline implicit in the position of Carrier in this dispute, would permit de facto discipline without investigation by the fact of suspension and later dropping of the charges, with reinstatement without compensation for time lost. Such action would be counter to the very basic purposes explicit in the disciplinary provisions of the Agreement. The Claim must be sustained. However, we do

not agree with the fourth section of the Claim relating to the payment of interest. As we have held in many prior Awards, in the absence of an express provision in the Agreement providing for interest payments, we do not have the authority to rewrite the rules creating that remedy.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

A W A R D

Paragraphs 1, 2 and 3 sustained; paragraph 4 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1975.