NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20867
THIRD DIVISION Docket Number SG-20920

Louis Norris, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company
(Texas and Louisiana Lines

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former Texas and Louisiana Lines of the Southern Pacific Transportation Company:

Claim of BofRS and former Assistant Signalman J. R. Strehl, Houston Signal Shop, for reinstatement with pay for time lost and other rights unimpaired, when dismissed from service April 5, 1974.

OPINION OF BOARD: This is a discipline case based on charges against Claimant of insubordination; altercations and quarrelsome and vicious conduct with his Supervisor, and with his Training Instructor during classroom training; disruption of training classes; and for being absent from employment without proper authority; all in violation of Rules 801, 804 and 811 of the controlling Agreement.

Formal investigation was held on April 4, 1974, Claimant was found guilty as charged and was dismissed from service on April 5, 1974. Demand is now made by Petitioner "for reinstatement with pay for time lost and other rights unimpaired.. ."

At the outset, two procedural issues are raised which require disposition. Firstly, during the handling of this dispute on the property, Petitioner demanded a "hearing" on its appeal subsequent to the investigation and dismissal. We agree with the contention of Carrier that there is no Rule in the Agreement which provides for such "hearing". It is true that Rule 700(g) states "at investigation or an appeal . . .", but we do not agree that this envisages two (or more) hearings, plenary in nature, on the same issues and involving the same witnesses. Accordingly, we do not sustain Petitioner's contention on this issue.

Secondly, it is argued by Petitioner that Claimant was not afforded a fair and impartial investigation in that two additional witnesses were not called by Carrier. There were six employee-students overall who attended the training class at which certain of the incidents charged against Claimant occurred. Not only did Claimant testify on such incidents, but three other "students" were also called to testify. On this basis, the failure to call all the students as witnesses was in no sense prejudicial to Claimant. Moreover such additional testimony would have been merely cumulative.

We stress further, as we have repeatedly held in prior Awards, that the Claimant has the option, and the burden, to call other witnesses in his behalf, whose testimony is deemed relevant to the charge. Rule 700(g) is amply clear on this point. Nor can Claimant shift that burden to Carrier. See Awards 13643 (Bailer), 16261 (Dugan), and 17525 (Dugan), among others.

Accordingly, Petitioner's objection on this issue is not sustained.

On the merits, we have carefully reviewed the entire record, with particular attention to the testimony adduced at the hearing. Thus, for example, Instructor Lee and Supervisor Hogenson testified in detail on Claimant's insubordinate conduct; that he was unduly argumentative and resistant to proper authority to the point of resentment of simple directions; that he used vile and offensive language to those in authority and referred to his Supervisor as a "dawn liar"; that he disrupted the class during training sessions and engaged in quarrelsome altercations with his Training Instructor.

The above testimony was corroborated in major degree by student Cowan, and substantially but in lesser degree by student Theriot. Student Reagan testified he was not present during these occurrences. Supervisor Nelson had no personal knowledge of these events, but in reference to Claimant's "production" and putting in "a days work", Nelson stated that "it leaves something to be desired." However, he did testify to a prior incident, between Claimant and another Supervisor, and stated to Claimant directly "You were rather belligerent in your reply indicating that you felt that you did not need supervision. And that you resented a supervisor checking on your work".

As for Claimant, he conceded at various points that he had disrupted the class, had used objectionable language (which he repeated), used the phrase "that is a damn lie" in reference to Mr. Hogenson, lost his control and argued with Mr. Lee and used "profanity" and vulgar language because "it is part of my vocabulary."

To recapitulate, although the testimony indicated some variance in specific details, there was sufficient probative evidence to sustain the charges against Claimant by a fair preponderance of the evidence. This was in essence a factual matter and, in view of the corroborating testimony and the admissions of Claimant, we are unable to conclude that the findings of Carrier in sustaining the charges were in any sense improper or not based upon the evidence. The record speaks to the contrary.

We find, therefore, that the investigation was fairly and impartially conducted; that Claimant was vigorously represented by the Organization General Chairman and Local Chairman. with full opportunity for cross-

examination; that Carrier's findings were based upon substantial credible evidence; and that none of Claimant's procedural or substantive rights were violated.

The principle is well established that where there is substantial probative record evidence preponderating in Carrier's favor, supporting the charges and the discipline imposed, this Board will not disturb the action taken. Particularly is this true where the record supports the finding that Carrier has not acted arbitrarily, unreasonably or without due process. In view of these circumstances and Claimant's own admissions at the investigation, this Board would be usurping its powers were it to substitute its judgment for that of Carrier.

See Awards 3149 (Carter), 10791 (Bay), 14700 (Rohman), 15574 (Ives), 16602 (Devine), 19433 (Blackwell), and 19874 (Roadley), among many others.

Petitioner urges that under the circumstances here involved the discipline of dismissal was excessive, citing Award 19679 (Dorsey). But the facts involved in that case are entirely dissimilar from the facts here. Furthermore, there is no clear indication of the basis upon which the discipline there imposed was completely reversed, particularly since "substantial evidence of responsibility" was found. Assumedly, that Award rested on a finding of Claimant's "oversight" in the handling of certain equipment, but that issue has very little bearing on the dispute before us.

We have held repeatedly that unauthorized absence from assigned duty is a serious offense warranting imposition of discipline and possible dismissal from service.

See Awards 14601 (Ives), 16860 (McGovern), 17069 (Goodman) and 17750 (Dolnick).

similarly, we have held in unnumerable prior Awards that insubordination is a dismissable offense (see Awards 14067 (Rohman), 14273 (Ives), and 18563 (Edgett); and that engaging in repeated altercations and acts of resistance to proper authority are grounds for discipline. See Awards 11327 (Dolnick), 15713 (Engelstein) and 19698 (Rubenstein).

In view of the seriousness of the charges, therefore, and Claimant's service record during the brief six months span of his employment, plus his own admissions at the investigation, we are unable to conclude that the discipline here imposed was unreasonable, arbitrary or excessive.

Accordingly, we see no basis upon which to sustain the claim.

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 apprwed 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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November 1975.