NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20868
THIRD DIVISION Docket Number SG-20926

Louis Norris, Referee

PARTIES TO DISPUTE: Brotherhood of Railroad Signalmen
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(Southern Pacific Transportation company
(- Texas & Louisiana Lines

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

Claim of BRS and f-r Houston Division Signalman Clarence Cunningham, Jr., for reinstatement to service with pay for time lost and with seniority unimpaired.

OPINION OF BOARD: At the time this dispute arose Claimant was employed by Carrier as a Signalman with seven years of service. Pursuant to notice of April 5, 1974, Claimant was charged with dishonesty, in violation of Rule 801 of the controlling Rules and Regulations, in connection with an incident which occurred on November 21, 1973. Formal investigation was held on April 10, 1974 and Claimant was discharged on the same day. Rule 801 reads as follows:

> "Employes will not be retained in the service who are careless Of the safety Of themselves or others, indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, orwho conduct themselves in a manner which would subject the railroadto criticism..."

The underlying fact6 are that on November 21, 1973, Claimant was arrested by the police on charge6 of property theft from Howard Discount Center. He appeared in Court with his attorney and was released on bond. The "property" involved was a fur hat valued at $4.47. Thereafter hi6 case came before the Court on February 26, 1974, at which time hi6 attorney entered a plea of guilty and Claimant was fined $44.70 plus court costs. On March 18, 1974, Carrier official was notified by the Police Department of the guilty plea and fine. On April 5, 1974, eighteen days later, charge6 were placed by Carrier against Claimant, a6 stated above.

The pertinent language of Rule 700(a) of the controlling Agreement, which relate6 to 'Discipline and Investigation" (and upon which resolution of this dispute depends), state6 that "Charges will be made in writing within twenty (20) day6 of knowledge of an offense."

It is not disputed that Carrier had knowledge of the arrest on the day it occurred - November 21, 1973. It is Petitioner's contention that such knowledge constituted "knowledge of an offense" under Rule 700(a) and that this started the running Of the prescribed 20 day period. Accordingly, Carrier having "failed to place charges" until April 5, 1974, it violated the Agreement. Claimant should therefore be reinstated with right6 unimpaired and payment for time lost.

Conversely, Carrier contend6 that the arrest was au accusation, not an offense; that the accusation ripened into "an offense" when the guilty plea was entered; that it then brought charges within the stated 20 day period; that the evidence adduced was conclusive on the charge of dishonesty; and that, accordingly, the discipline of dismissal was warranted under the Agreement and implementing Rules.

We have carefully reviewed the entire record and the various precedent6 cited by Carrier and Petitioner, and particularly the evidence adduced at the investigation and the record of the court proceedings, on the basis of which we reach the following conclusions and findings.

We acknowledge our obligation to interpret the Agreement a6 written and that the burden of proof in discipline cases rests on Carrier. We recognize, further, that no property or personnel of Carrier was involved in the arrest of Claimant or in the court proceeding6 resulting therefrom. The criminal charge against Claimant was for theft from a third party; the witnesses against Claimant were police officer6 and employee6 of the third party. In these circumstances, Carrier's knowledge of the Incident on November 21, 1973 constituted knowledge that "an accusation" had been filed against Claimant, on which he was entitled to the presumption of innocence until proven guilty. Carrier afforded him that right by withholding it6 charges until it acquired knowledge of the guilty plea. Only then did Carrier have factual "knowledge of an offense" under Rule 700(a), upon which its own charge6 and investigation relied of necessity.

"Only then could it be ascertained, with any degree of certainty, whether or not disciplinary action was indicated." See Public Law Board No. 716, Award No. 3 (Gilden, Chairman).

"The investigation depended entirely on the court proceedings, in which Claimant pleaded guilty." And "the convening of an investigation prior to final termination of a prosecution could be deemed premature". Further, "that by awaiting the outcome of a court proceeding, laches does not begin to accrue against Carrier until the court case has been adjudicated". See P.L.B. No. 1, Award No. 8 (Sempliner, Neutral) and P.L.B. No. 1316, Award No. 5 (Edwards, Neutral).

Petitioner cite6 several prior Awards which, it asserts, support its position here. However, analysis of there cases indicate that they are not germane to this dispute. For example, Awards 12437 and 17081 relate to facts entirely dissimilar fro61 the fact6 here. Additionally, 12437 dealt with an investigation held after dismissal. Award 16632 dealt with au investigation held more than twenty day6 after Carrier "had factual knowledge" of the offense. In Award 6001 (2nd Division) the question of "knowledge" was not involved, the major issue being Claimant's refusal to testify at the investigation. Finally, in Award 20711 (lst Division), the Claimant was not charged with misconduct until 49 days after the guilty plea, although the Rule specified a seven day period.

Factually, there was substantial probative evidence in the record to support the "dishonesty" charge against Claimant, which was buttressed conclusively by the criminal court proceeding6 and Claimant's plea of guilty. We are not persuaded by Claimant's asserted "ignorance" of these proceedings, nor by the fact that the plea was entered in his absence by his attorney. These were matter6 solely within Claimant's area of responsibility, for which he must assume the burden. Obviously, Carrier was in no way Involved in these matters. Furthermore, the record is quite clear that Carrier acted in timely fashion, pursuant to the Agreement, once it acquired factual knowledge of the plea of guilty, which, as we have demonstrated above, constituted "knowledge of an offense" under the Rules.

In consequence, therefore, we find that the charge6 against Claimant were properly brought and the investigation fairly conducted in conformance with the Agreement. Further, that the criminal court proceedings and Claimant's plea of guilty were competent evidence to establish the charge of dishonesty under the Rules.

The principle has been well established that we will not disturb Carrier's decision on guilt or the discipline imposed where it is supported by substantial probative evidence and Carrier has not acted arbitrarily, unreasonably or contrary to due process. See Awards 3149 (Carter), 9422 (Bernstein), 10429 (Rock), 13674 (Weston), 15566 (Lynch), 19216 (Edgett) and 20189 (Sickles), among many others.

Petitioner urge6 that the discipline of dismissal is excessive, but Rule 801, quoted above, clearly provide6 that "Employes will not be retained in service who are . . . dishonest . . ." Additionally, we have held repeatedly that a rule violation associated with dishonesty is a disciplinary act and, in proper circumstances, merits dismissal. Furthermore, that "the comparatively small amount of the article6 Involved is not a mitigating circumstance". See Awards 13130 (Kornblum), 13674 (Weston), 16168 (Perelson), 16888 (Goodman), 19486 *(Brent)* and 20003 (Blackwell), among others.

Finally, we find no basis in the record to support the issue of racial discrimination raised by Petitioner. The use of the word "colored" was for purposes of identification only, and the record is completely absent of any fact6 attributing bias to Carrier in it6 investigation or in its conduct of this dispute. That issue16 entirely irrelevant here.

Accordingly, based on the record evidence and controlling authority, we will deny 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, a6 approved June 21, 1934;

That this Division of the Adjustment Board ha6 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. Paulus
Executive Secreatry

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