NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20874
THIRD DIVISION Docket Number SG-20698

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Eric Lackawanna Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railway Company:

On behalf of L. C. Barnes for removal of discipline resulting from investigation held on December 28, 1972. /Carrier File: 214-Sig. General Chairman File #4747

OPINION OF BOARD: Claimant L. C. Barnes entered Carriers service in January 1972 and worked as Assistant Signal Maintainer, In December 1972 Claimant received a Letter reading In pertinent part as follows:

> "In accordance with Rule 60, Article 7 of the Agreement between Erie Lackawanna Railway Company and Signal Department Employees, effective March 1, 1953, you are hereby notified to present yourself at a hearing account alleged violation of Rule O-2, which reads in part, 'Employees who are...immoral...will not be retained in the service'. This rule is contained in the Safety Rules Maintenance of Way and Structures Employees, Engineering Department Employees, effective July 1, 1964, revised February 1, 1968."

Following an investigation held on December 28, 1972 Claimant received on January 8, 1973 a Record of Discipline which read as follows:

> "After careful investigation and consideration. the following action is deemed necessary for the maintenance of proper discipline, and corresponding entry has been made on employe's service record effective January 9, 1973
> Date
>
> Ten (10) days deferred suspension account violation of Rule O-2 of Rules of the Operating Department effective October 25, 1970.
>
> Discipline is in all cases administered for the education, caution and benefit of yourself and other employes rather than as a punishment to you, and if, with this understanding, you feel that injustice has resulted, you are invited to call on me for further conference."

Thereafter, by Letter of January 26, 1973 Claimant filed the instant claim wherein he stated:

> "Please consider this an appeal to your Letter of Jan. 8, 1973 which states that i have received ten days deferred suspension account violation of Rule O-2 of Rules of the Operating Department effective October 25, 1970.
>
> I feel this an unfair and unjust decision as I do not feel I have violated Rule O-2 of Rules of the Operating Department therefore I think this should be taken off of my record."

The claim was handled through all appeal procedures on the property without settlement and now comes to our Board for disposition.

The crux of this dispute is the question of whether Carrier has the right to discipline an employee for conduct away from the place of work. Each of the parties have cited numerous Awards and authority, review of which leads to a qualified "yes" in answer to the central question herein. Carrier has placed great reliance on Award 20703 of the First Division which states in pertinent part as follows:

"The question of an employer's right to dismiss an employee for conduct away from the place of work has not yet been answered with finality by industrial arbitrators. As a general rule, they have held however, that such conduct constitutes just cause for dismissal if the employer's reputation may conceivably be damaged by the notoriety of the employe's conduct. See Frank Elkouri & Edna A. Elkouri, How Arbitration Works, Rev. Ed., Wash. D. C. B. NA Incorporated, 1960, pgs. 414-415 and cases cited therein and Orme W. Phelps, Discipline and Discharge in the Unionized Plant. Berkeley, California University of California Ress, 1959, p. LO7 and cases cited therein." (Emphasis added).

Our consideration of this matter and especially study of the authorities cited in Award 20703 leads us to conclude respectfully but firmly that the general rule is mistated therein. The correct standard is that an employe's off duty misconduct may be the subject of employer discipline where that conduct was found to be related to his employment or was found to have an actual or reasonably forseeable adverse effect upon the business. The connection between the facts which occur and the extent to which the business is affected must be reasonable and discernible. l'hey must be such as could logically be expected to cause some result in the

employer's affairs. In this Latter connection mere speculation as to adverse effect upon the business will not suffice. Elkouri & Elkouri, How Arbitration Works, 3rd Ed. B.N.A.. Inc. Wash. D. C. 1973 pp. 616-618. (Emphasis added)

In applying the foregoing principles to the instant case we must conclude that under different circumstances Claimant's off duty conduct might have presented grounds for discipline but the record in this case is not sufficient to permit our endorsement of Carrier's discipline. There is no showing whatever that Carrier's reputation was connected in any way to Claimant nor that the employer - employee relationship was a matter of public record let alone notoriety. brewer, the six-month time delay between the off duty incident and Carrier's charges against Claimant, during which time Carrier suffered no apparent or proven adverse effect, is additionally probative that no actual or foreseeable causative link existed between the conduct and the employer - employee relationship.

Finally, we are cognizant of Carrier's professed disciplinary policy as stated in the Record of Discipline which we noted **supra** and quote again with approval:

"Discipline is in all cases administered for the education, caution and benefit of yourself and other employees rather than as a punishment to you and if, with this understanding, you feel that injustice has resulted, you are invited to call on me for further conference. "

In our considered judgement, the discipline imposed in this case by Carrier was unsupported by the record and was punitive, arbitrary and unreasonable. Accordingly we shall sustain the claim and order the removal of the LO day suspension from Claimant's personnel file.

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1975.