NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20993
Docket Number SO-20822

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Robert W. Blanchette, Richard C. Bond and John H. McArthur, Trustees of the Property of Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: On behalf of, Signal For- R. J. Tarte, who was suspended from service October 8, 1973 pending hearing and subsequently dismissed from service effective November 29, 1973, for restoration to service with payment for all time lost including any overtime employes in his gang junior to him received during his suspension.

OPINION OF BOARD: Claimant R.J. Tarte was taken out of serviceby the Supervisor, Communications and Signals, on October 8,1973. By letter dated October 9, 1973 Claimant was served with a Notice ofHearing reading as follows:

"1. Insubordination for your failure to follow direct orders from Asst. Supv. C&S given to you on October 1, 1973 when you failed to properly place cable as directed at MP 47.8,Jamesville, Mass.

2. Insubordination when you refused 8 direct order from the Supv. C&S at approximately 11:15 a.m. on October 8,1973, at Jamesville, Mass. MP 47.8 to return to him and discuss the improper placement Of cable.

3. Being disrespectful and use of obscene language to Supv. C&S at approximately 11:15 a.m. on Oct. 8, 1973, at Jamesville, Mass., MP 47.8."

Following three postponements, two at the behest of Claimant end one upon the request of the General Chairmen, the hearing was held on November 16, 1973. Thereafter, by letter dated November 29, 1973, Claimant was informed as follows:

"PENN CENTRAL TRANSPORTATION COMPANY

Boston Massachusetts
November 29, 1973

REGISTERED RETURN
RECEIPT REQUESTED

Mr. Robert J. Tarte
126 Concord Street
Ashland
Massachusetts

Dear Sir:

This is to advise you that 8s 8 result of a Hearing which vas concluded on Friday, November 23, 1973 in connection with charges levied against you 8s outlined in letter of notification dated October 9, 1973, and based on the facts established at the Hearing, you have been found guilty of the charges levied against you.

Accordingly, you will be dismissed from the service of this Company effective November 29, 1973.

Kindly acknowledge receipt of this letter on copy attached and return to this office.

Very truly yours,

E. c. CROSS /s/
Division Superintendent"

Claimant appealed this decision to Carrier's Chief Signal Engineer and, following an appeals hearing, that official denied the appeal but overruled the initial hearing decision in part 8s follows:

"Regarding the appeal. hearing which began in Worcester, Mass. on December 12, 1973, and at your request, was postponed until December 14, 1973. Reference to the hearing held in Boston charging you with: (1) insubordination on Oct. 1, 1973 (2) Insubordination on Oct. 8,1973 aud (3)being disrespectful and use of obscene language on Oct. 8,1973 at Jamesville, Mass.

I have reviewed the transcript of the referred to hearing as well as the facts brought forth in the appeal hearing and I could find no violation of Rule 36 wherein you were not given a fair and impartial hearing.

"The charge of insubordination on Oct. 1, 1973 is not substantiated in the hearing and is thereby overruled.

The charge of being disrespectful and using obscene language is not substantiated and is also overruled.

The charge of insubordination on Oct. 8, 1973 is substantiated and not refuted and is thereby upheld.

In view of your past record which reads as follows and is taken into consideration at this time, and the seriousness of the charge substantiated, I find the discipline of dismissal was warranted:

1. Oct. 25, 1943 Violation: Rule 725 Discipline: Dismissed from service: Re-employed Feb. 11, 1944.
2. Dec. 1, 1945 Violation: Off duty without permission. Discipline: Two days record suspension.
3. Jan. 28, 1946 Violation: Switch Run-through at interlocking:. Discipline: Six days record suspension. Served two days from item 2.
4. Nov. 28, 1946 violation: Insubordination Discipline: Verbal reprimand.
5. April 30, 1947 Violation: Insubordination Discipline: Three days actual suspension.
6. Feb. 16, 1951 violation: Not properly taking care of work on section 3 and interlocking 23 on Jan. 29, 1951. Discipline: Five days record suspension.
7. June 11, 1969 Violation: Violation of Rule 3000 and Rule B and T of the Rules for Conducting Transportation. Discipline: 30 days actual suspension.
8. Mar. 17, 1969 Violation: Violation of Rule 3024 Discipline: Five days record suspension.
g. Oct. 9, 1972 violation: Insubordination Discipline: 10 days actual suspension.

Your appeal is therefore denied."

Claimant appealed this decision to Carrier's Director-Labor Relations who, following an appeal hearing on January 14, 1974 notified Claimant as follows:

"PENN CENTRAL TRANSPORTATION COMPANY

January 29, 1974

Mr. Robert J. Tarte
126 Concord Street
Ashland, Mass. 01721

Deer Sir:

Please refer to your letter of December 20, 1973 concerning your appeal of discipline of dismissal assessed you on November 29, 1973.

In accordance with your request, an appeal hearing was held in this office on January 14, 1974.

We have carefully reviewed the records in this case 8s well88 your statements at the appeal hearing. However, ve find no basis in fact or in the record for changing the discipline involved in the case. Accordingly, your appeal for restoration to service end payment for time lost is denied in its entirety.

Very truly yours,

N. P. PATTERSON /s/

N. P. Patterson
Director-Labor Relations

cc: R. J. Moran, General Chairman, BRS"

Thereafter, Petitioner, on behalf of Claimant, processed the claim to our Board for review and determination.

Claimant R. J. Tarte was at the time the instant claim arose 8 Signal Foremen employed by Carrier on the former Boston and Albany Railroad. Before and after the incident of October 8, 1973 Claimant has served as a General Chairman of the Petitioner Organization but was out of office on that date. The record developed at the initial hearing sets forth the Incident out of which the dismissal arose and rather than paraphrase ve shall set forth the testimony of the direct participants therein. It is noted that the sole remaining charge against Claimant is insubordination for refusing a direct order from the Supervisor C&S on October 8, 1973, and, accordingly, our review of the transcript will be limited to that line of inquiry. The Supervisor C&S made 8 statement relative to the incident of October 8, 1973 as follows:

"On October 8, 1973, Mr. Lombardi and myself went to Jamesville to look over the progress at the location. I noted the signal cable, the new signal cable, hanging low to the ground, installed low to the grouud. I questioned Mr. Lombardi why the cable vas installed so. He Stated that he had instructed Mr. Tarte to install said cable under the second arm in lieu of the bottom arm. At that time Mr. Tarte approached us. I greeted Mr. Tarte with "Hello gob." His first statement to me or to us, excuse me, Mr. Lombardi and myself, was what are you critizing nov. At that time I asked Mr. Tarte why he had installed the cable under the bottom arm when he was instructed by Mr. Lombardi to install the cable under the second arm. At that time Mr. Tarte explained that this is the way that they install cable on this railroad and he could show me numerous occasions where its installed likewise. I explained to Mr. Tarte that It was irrelevant, that he was instructed to place the cable as directed by Mr. Lombardi. He then went on and stated that he knew more about signalling then him, him referring to Mr. Lombardi, and he had so many year6 on the railroad. At that time I explained to Mr. Tarte that what was transpiring was constructive criticism. At that time Mr. Tarte stated to me if all I could do is come around here and critize this ob, then don't come around here with this god damn shit. He turned from me aud started to walk away. As he walked away I called for Mr. Tarte to return to me. I called for im to return three times. On the third time he turned and told me I Could go back to Philadelphia with the rest of those damn muts and continued to walk away fro61 me. At that time I asked Mr. Lombardi who in the gang that he wanted to take Mr. Tarte's responsibilities a6 I was taking Mr. Tarte out of service. I went down to the location where Mr. Tartewss working with the gang, told Mr. Tarte to come with me and make arrangements to get him back to his automobile, I was taking him out of service. At the location of his vehicle just before departing, he made 6 statement that I could whistle when I wanted him back and that concluded the transaction between Mr. Tarte and myself on October 8 at Jamesville." (Emphasis added.)

Claimant declined to sake a statement at the hearing but, under cross-examination, he testified as follows:

"Q. Mr. Tarte, you were the Signal For- on duty at Jamesville on October 8, 1973?
A. Yes.

"Q. On the morning of October 8,1973, did Mr. Bryce appear on the site at Jamesville?
A. With Mr. Lombardi, yes.

Q. And did Mr. Bryce have 8 conversation with you relative to the work which had been performed?
A. Not at the moment no. He and Mr. Lombardi spent considerable time pointing and gesturing at the cable that I had previously installed.

Q. Did Mr. Bryce hare a conversation with you while he was on the Site at Jamesville?
A. Subsequently later, yes.

Q. During the course of this conversation did you walk away from Mr. Bryce?
A. I most certainly did,

Q. Did you hear Mr. Bryce call to you to return to him?
A. Not in the sense as one would normally call, no. In8 very demeaning and derogatory manner 8s one would call a dog to heel to his master I was called to return and subject myself to further harassment by Mr. Bryce.

Q. After having been called three times did you turn and make comment to Mr. Bryce?
A. I made comment to Mr. Bryce on 8 number Of time6 in that particular time period.

Q. On the occasion of his third call to you it has been testified that you turned to him and made remarks such 86 why don't you go back to Philadelphia with the rest of the nuts.
A. To the best of my recollection that is not correct. My reference was that because of his attitude and actions that he was merely trying to provoke me and I suggested merely to return to Philadelphia where they are expertise in this manner.

Q. ', Bryce call you on three occasions to return to him. Is this correct?
A. I believe it was more than three times. But you see at the moment I was not aware that I was being set up for a fall and I could be exact 8s to the number-of instances that I was called or asked questions. I had no prior knowledgethatthis sort of thing was going to take place 88 Mr. Bryce and Mr. Lombardi had patched this over ahead of time.

"Q. Did you return to Mr. Bryce when he called you Mr. Tarte?
A. No I did not. I felt and came to the conclusion at this incident that I was being set up for 8 fall that was deliberately being projected and that I better have someone Who could witness there dastardly activities by these two personages and I moved a distance away from them so I could be close to my gang who was working there so that if they contimued on with the harassment I too would have 8 witness to the allegations and statements.

Q. Do you recognize Mr. Bryce as an officer of this company?
A. I believe he is.

Q. And 8s such do you recognize him 88 having authority and jurisdiction over you?
A. I believe he does.

Q. In view of the fact that you failed to comply with Mr. Bryce's calls for you to return to him on October 8 do you feel that you were disregarding his instructions?
A. Under the circumstances of the call I do not. The fact that one is 8 person's immediate supervisor doe6 not give that supervisor the right to demean, harass and make suggestive attitudes that vould be demeaning to the employee for the sole purpose of harassment and I don't believe that I have to be responsible to any carrier official that is 8 6 abusive and corrupt as these two individuals were at this time, and the carrier's concurrence with their attitudes is evident in the fact that I have filed a complaint against these two individuals and the carrier has not even had the decency to acknowledge the complaint as yet.

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Q. But you do agree that you did fail to comply with the orders of Mr. Bryce to return to him. IS this correct?
A. In the manner that I felt that I would not have to respond to such a call that I was not 8 puppy dog to be heeled by his master. As 8 matter Of fact I was so Shocked by the experience and realized that I was being belittled and demeaned that when I wasleaving I said to Mr. Bryce 'Don't forget to whistle when you want me back' in keeping with the tenor of the conversation, that he was calling me 86 one would call 8 dog."

The jurisdiction of this Board in discipline cases is well understood to be 8 threefold inquiry 86 to 1) Whether Claimant was afforded 8 fair and impartial investigation 2) whether substantial record evidence supports the charge and 3) whether the discipline imposed is, in all of the fact6 and circumstances of the case, 60 disproportionate to the offense 8s to be arbitrary, unreasonable or capricious. We have carefully reviewed the instant record in light of these standards.

Petitioner contends at the outset that Claimant should be reinstated with full compensation because Of numerous alleged violations of Rule 36 relative to 8 fair and impartial hearing and handling of the claim. In this connection the allegations include improper notice, failure to grant prompt hearing, prejudgment, improper official making decision, failure to provide transcript6 of hearings, harassment of Claimant and his wife and an overall allegation that the entire disciplinary proceedings were 8 "Kangaroo Court". We have reviewed the evidence on each of these charges and are satisfied that they ate not supported by the record. The notice was sufficiently precise and timely, postponements were all at the request of Claimant or his representatives, there is no requirement that 8 specific official render the disciplinary decision, there is no probative evidence that Claimant was deprivedof 8 transcript, and the recurring allegations of harassment, intimidation and coercion of Claimant by Carrier officials at all level6 has absolutely no foundation in the evidence before us.

It is also asserted that the suspension of Claimant from October 8, 1973 until hi6 dismissal following investigation, effective November 29, 1973, was violative of his Agreement rights. Roth Petitioner and Carrier have cited substantial authority for their countervailing positions on this issue, all of which we have reviewed. The express language of Rule 36 provides for suspension "in 8 proper case". Each Of the awards relied upon by Petitioner dealt with misconduct of a relatively minor nature. Here we have a charge of gross insubordination and in all of the circumstances suspension clearly was not 8 violation of Rule 36 and consistent with 8 long line of awards interpreting identical rules on various properties.

There is absolutely no doubt that the charge of insubordination is supported by the record, including Claimant's version Of the incident of October 8, 1973. Rarely have we encountered so clear and flagrant 8 case of outright refusal to obey a reasonable order of 8 superior. Nor do we find circumstances to justify or mitigate the impact of this refusal. Claimant's extravagant claims of a plot by "abusive and corrupt" supervisors to "demean, harass and belittle" him and otherwise engage in "dastardly activities" in order to "provoke" him are without any support whatever in the record before us.

In the face of the proven insubordination discipline is no doubt warranted. The question remains as to the quantum of discipline imposed.

Petitioner urge6 that in all of the circumstances dismissal is so shockingly severe a6 to warrant reversal. We cannot agree. Considering the nature of the offense, aud Claimant's overall disciplinary record, including several previous citation6 for Insubordination, we cannot conclude that dismissal is arbitrary, unreasonable or capricious. The claim must be and is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds audbolds:

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 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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1976.