NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21025
THIRD DIVISION Docket Number CL-20853

Louis Norris, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Robert W. Blanchette, Richard C. Bond, and John H. McArthur, Trustees of the Property of Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7597) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal, later reduced to a seven days suspension, on W. C. Parr, Crew Dispatcher, Trenton, New Jersey, Eastern Region, Philadelphia Division.

(b) Claimant W. C. Parr's record be cleared of the charges brought against him on or about March 28, 1973.

(c) Claimant W. C. Parr be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: It appears from the record that Carrier and Petitioner are not in disagreement as to the basic facts involved in this dispute. On March 26, 1973, the date of the incident which gave rise to the charge, Claimant was acting as Crew Dispatcher of the train crews, and another Crew Dispatcher handled the engine crews. Claimant received a call from Engineman Stevens for permission to be off the following day. Claimant granted such permission, but then failed to properly note the crew board and work sheets accordingly so that Stevens would be "marked off" for the 27th.

The Notice of Investigation, although couched in three charges, nevertheless is based in toto on the one specific incident. In essence, Claimant is charged with neglect of duty resulting in "delay to the hump operation . . . on March 27, 1973, due to your failure to have Engineman A. E. Stevens properly marked off". Formal Investigation was held on April 9, 1973, Claimant was found guilty as charged, and discipline of dismissal was assessed, later reduced to seven days suspension,

Petitioner raises objection, firstly, to the form of the Notice of Investigation in that the "precise offense" was not clearly specified. We cannot agree. The language of the Notice was clear, precise and detailed. It was amply sufficient to put Claimant on notice as to an occurrence with which he was fully familiar and did not in any way prejudice his defense at the Investigation or violate his rights of due process. Clearly and unequivocally, the Notice apprised him of "the exact offense involved" as required by Rule 6-A-1(b) of the Agreement.

Our examination of the transcript of the Investigation shows conclusively that it was meticulously conducted in a fair and impartial manner, in full compliance with Rule 6-A-1(a) and with strict adherence to Claimant's rights to a proper and fair hearing.

Nevertheless, Petitioner objects, contending that it was never the purpose of an Investigation or Disciplinary Procedure to proceed on the basis of human error and unintentional misconduct. We cannot sustain such objection. Human error to the extent that it involves neglect of duty is a proper basis for disciplinary procedures within the managerial prerogatives of Carrier. Nor is there any Rule in the Agreement to the contrary.

Moreover, when Claimant took it upon himself, despite the fact that Stevens came under the jurisdiction of another Crew Dispatcher, to grant Stevens permission "to mark off" the next day, he assumed certain interrelated responsibilities - to see to it that Stevens was properly marked off on the crew board and on the work sheets. His neglect in failing to do so renders him culpable and subject to discipline.

See Awards 20807 (Quinn) and 20169 (Blackwell) among others, Award 20169 being practically on all fours with the facts involved in the case before us.

We do not quarrel with the Awards cited as precedent by Petitioner. In the main, these Awards confirm the established principle that in discipline cases the burden of proof is upon Carrier to prove convincingly by substantial probative evidence that Claimant is guilty of the offense charged and upon which his disciplinary penalty is based.

See Awards 14120 (Harr), 20245 (Lieberman), and 20252 (Sickles) among many others.

In applying the latter principle to the dispute before us, we find that such "substantial probative evidence" is present in this record, and that Carrier sustained its burden of proof "convincingly". This is particularly true in view of Claimant's specific admissions in his testimony as to the facts relating to the specific charge against him.

In these circumstances, we have held repeatedly that, although we may on occasion disagree with Carrier as to the degree of discipline, we will not substitute our judgment for Carrier's in assessing discipline; provided, that Carrier has not acted arbitrarily, capriciously or unreasonably or in violation of due process.

See Awards 15574, 17914, 19487, 20245, 20194 and 20423, among many others.

We find no basis in the record before us upon which to conclude that Carrier has so acted in this case. Nor do we conclude that the discipline here imposed, seven days suspension, was unwarranted, unreasonable or arbitrary. Accordingly, 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, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement wasnot violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 31st day of Marcy 1976.