

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21229  
Docket Number SG-21391

Walter C. Wallace, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalman  
(The Washington Terminal Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on The Washington Terminal Company:

**Appeal** on behalf of Mr. W. G. Kendall, Jr., who was dismissed effective 4:00 p.m. January 24, 1975, on the basis of the following charge: Excessive absenteeism on the following dates: 1-6-75 sick, 1-14-75 reporting but absent.

OPINION OF BOARD: Claimant was 18 years old and had been in service for six months with this carrier as an assistant signalman, a training position. He was ordered to appear for an investigation due to his excessive absenteeism. On January 22, 1975 a formal hearing was held on the following charges:

"Excessive absenteeism on the following dates:

1/6/75 - sick  
1/14/75 - reporting but absent"

The charges were brought by Mr. M. J. Rose who also conducted the hearing. Based upon the findings at the hearing, the claimant was found guilty as charged and on January 24, 1975 he was dismissed from service by letter from Mr. M. J. Rose. The Brotherhood cites various sections of the agreement between the parties dealing with "Discipline and Grievances". Special reference is made to the requirements that an employee in service more than thirty days must not be disciplined without a fair and impartial investigation and he is entitled to a fair and impartial hearing.

It is the Brotherhood's position that its appeal following the dismissal of claimant was based upon leniency, and in the alternative if that fails "the discipline should be reduced by returning him to service at a later date".

Further; it is the Brotherhood's position that the penalty of dismissal here is excessive. In addition, the appeal is grounded upon the fact the claimant was denied due process insofar as Mr. Rose, the carrier representative, filed the charges, conducted the investigation, and assessed the discipline. Lastly, the Brotherhood alleges that carrier prejudged the claimant guilty and, presumably, he was denied a fair and impartial hearing.

The carrier, for **its** part, **opposes** these positions. Neither party **cites** **provision** Of the agreement between the **parties** dealing with the subject of absenteeism or excessive absenteeism. The issues recited above will be considered in order:

If the appeal **on** behalf of claimant was based upon leniency, it would be difficult to Avoid the **argument** that such a matter is one of **managerial discretion** and **hardly** a basis for **review** by this **Board**. The Brotherhood claims, however, that it **made** its appeal in the **alternative**, one Of which was leniency. It **is** Clear that carrier rejected the appeal and in two separate instances wade reference to the appeal as **one** for leniency. There is no indication in the record that the Brotherhood **protested** such references. **On** the other hand carrier **cites** Award 11651 in support of its position. **However**, that case is **distinguishable** because it was originally based upon a guilty plea subsequently converted to a plea for leniency. Although there **are** strong suggestions hers that the appeal was **originally** one for leniency subsequently **converted** to other grounds, we cannot reach that **conclusion** with confidence, baaed upon **this** record. Absent more **persuasive** reasons, we have **no alternative** other than to accept the Brotherhood's **view** that its appeal had a substantive **base** end **itis** therefore entitled to **review** by this **Board**.

As it happens the **substantive** review **dqes not** help the claimant in this **case**. The record **contains substantial evidence** in support of the findings that cleimaat was guilty of excessive absenteeism on the designated days. Such evidence includes his **admission** to **untruthfulness** regarding absences and his **admission** that he could not provide proof in the form of A doctor's certificate for the absence **when** he claimed to be sick. The Board's function in discipline **cases** is **not** to **substitute** its **judgment** for **that of** the carrier where there is an **evidentiary base** in the record for the findings reached.

Once the claimant's **guilt** had bean established it is appropriate to **review** claimant's prior **record for infractions** to determine the appropriate punishment. That wae **done** hare and it is clear that in **his** service of slightly over six **months** claimant **received warnings** and **reprimands** for his poor attendance. **On this** record the **penalty** of **dismissal** was not excessive and it cannot be said that **carrier's actions were** unreasonable, arbitrary or capricious.

With respect to the view that claimant **was** denied due process insofar AS the **same** person filed charges, conducted the investigation and assessed the **discipline**, we find there is a procedural obstacle. In the argument before this **Board** the claimant's representative placed primary emphasis on this and **cited** several awards in support of the view that this constitutes A failure of due process **and a denial** of a fair hearing. Unfortunately, we cannot reach this **question**. Carrier points out that this claim wes not made **on** the property by the claimant or his **representative**. We have reviewed the record **and we must** agree. An objection of this **nature** cannot be raised by claimant for the first **time** before this Board **and** its consideration is outside the bounds of our authority.

Lastly, the claimant asserts, without much discussion, that carrier prejudged the **claimant**. In support of this the **Brotherhood** points out that the carrier had produced no witnesses At the hearing. we **do not** see that there is any necessary connection between this premise and conclusion. Nevertheless, the short answer here is that this claim suffers from the same defect as the previous argument concerning unfairness. It **was** not made on the property and it cannot be raised here for the first time.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
**Executive** Secretary

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