

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21237**
Docket Number SO-20695

Dana E. Eischen, Referee

PARTIES TO DISPUTE: { **Brotherhood** of Railroad Signalmen
(The Long Island Rail Road Company)

STATEMENT OF CLAIM: Claim of the General **Committee** of the **Brotherhood** of Railroad Signalmen on The Long **Island** Rail Road:

Appeal from the discipline imposed on Mr. **J. P. Backes** as a result of a trial held on September 27, 1972.

OPINION OF BOARD: Claimant, **Signalman** Joseph P. **Backes**, on February 20, 1973 was assessed 15 days actual suspension following hearing and investigation into several charges as follows:

- "1. Failing to inspect telephones at **Hollis** as directed by foreman;
2. Improperly advising for- that truck **VOIC** required **gas**;
3. **Failire** to comply with instructions of foreman to gas up truck at **Holban** Yard;
4. Unauthorized trip to Morris Park;
5. Raving unauthorized items on truck VOIC. "

The Organization appealed the discipline on several procedural grounds to wit:
1) Notice of Discipline **not** given to General Chairman per Rule 60 (c);
2) Violation of Rule 70 regarding "reinstatement of dismissed employea";
3) Claimant denied "representative of **his** choice" in violation of Rules 25 and **59**; and, 4) No copy of transcript was given to General Chairman by Carrier thereby **again violating Rule 59**. Additionally, the Organization asserted that no substantial evidence supported Carrier's imposition of discipline. The Organization apparently concedes that if, arguendo, the charges were proven in a procedurally proper fashion, then the quantum of assessed discipline was not unreasonably disproportionate. Carrier maintains that Claimant's procedural rights were not violated, substantial evidence supports the charges and the discipline **was** properly assessed.

We turn first to the procedural points **raised** by the Organization and treat them seriatim. Our touchstone in such analysis **must** be the controlling **Agreement** and our own **Circular** Ho. 1. With respect to the alleged violations **of** Rule **60(c)** and 70 we find they are inadequate on their face. The latter cited contract provision has no bearing whatever in this suspension case and the former contains **no requirement** for **notifying** the

General Chairman of the **initial imposition** of discipline **but** rather applies only to **appeals**. In connection with Rules 25 and 59 the Organization **sees** a violation in **Carrier's** refusal to postpone the hearing 80 that **Claimant's** private attorney could attend. This allegation t- on a definition of the term "duly accredited **representative**". The Agreement itself at Rule 25 is clear and **express** leaving m room for ambiguity and m need for interpretation in this **case**:

"When the term 'duly accredited representative' appears in this Agreement, It **shall** be understood to mean the **regularly** constituted committee (or any member or member8 thereof) of the organization recognized or **designated as** the representative, for the purposes set forth **in** the **Railway Labor Act** as amended, of the **employees** covered by this Agreement."

Finally, the Organization on behalf of Claimant urges that Carrier **committed** fatal prejudicial **error** and denied Claimant a fair investigation because a copy of the transcript **was** mt given to the General **Chairman** by the Carrier. The Organization **finds** therein a violation of both Rule 59 of the Agreement and Circular **No. 1** of this Board. We cannot concur with this **view**. Whatever the **wisdom** and **efficacy of** such a practice we do mt interpret Rule 59 **as mandating** Carrier to provide the General Chairman with a personal copy of the transcript. The Agreement **is a** product of bilateral negotiations, Rule 59 has m provision regarding such procedure and we nay mt usurp the negotiators' function by adding such a requirement through **arbitral** interpretation. We **note** additionally that the General Chairman wan afforded opportunity to examine and study the **transcript** in Carrier's offices and that he did **so** during appeal of **this** claim. **Nor** can the Organization find comfort in **Circular Ro.. 1 in this cane**. We have studied each of the **authorities** cited by the able advocate for the Organization during our panel **discussion**. Each dealt **with situations** wherein **informat ion** and **evidentiary document6** were withheld by a party from **handling** on the property and then offered for **consideration de novo** at the appellate level. In those **cases** we declined to **consider such** evidence **nor** would we **hesitate** to do so decline **in future cases** of such clear **failure** to abide by our Rules. See **Awards 2556, 8068, 11812, 12942** and 13029. Rut **these** authorities do mt **find a parallel in this case** and the **failure** to provide a personal copy of the **transcript is** mt tantamount to withholding of **evidence in** violation of circular **No. 1**.

Turning to the **merits** of the **case**, the record **does support** a finding that Claimant **failed** without **justification** to carry out the **reasonable directions** of his **supervisor**. In our judgment the first four (4) **charges** cited **supra** are **supported** on the record before **us**. We do conclude that the fifth charge of **possession** of unauthorized **items was not fully proven** because m **nexus** of ownership, dominion and control or knowledge of presence **was** ever drawn between **Claimant** and the **items in question**. **But** leaving aside that charge the imposition of 15 **days suspension** for the other **proven offenses** is mt arbitrary, **unreasonable** or capricious. We shall **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 **Employees** involved in this dispute are respectively Carrier and **Employees** 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: *A. W. Pauls*
Executive Secretary

Dated at Chicago, **Illinois**, this 28th day of September 1976.