

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21395
Docket Number CL-21236

Walter C. Wallace, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and
Steamship Clerks, Freight **Handlers**,
Express and Station **Employees**
{ **Norfolk and western Railway Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the **Brotherhood** (CL-7843) that:

1. Carrier acted in an **arbitrary**, capricious, discriminatory and uncalled for manner when on August 9, 1974, it assessed a ten (10) day deferred suspension against the record of Clerk Robert E. Wright.

2. **Carrier** shall now be required to **remove** and expunge the **ten (10) day** deferred suspension from the **record of Clerk Robert E. Wright** forthwith and any reference thereto.

OPINION OF BOARD:

This is a claim of the System **Committee** of the **Brotherhood** on behalf of Clerk Robert E. Wright in that **Carrier** had acted in an **arbitrary**, capricious, discriminatory and uncalled for **manner** when it assessed a **ten (10) day** deferred suspension against his record. The **Claimant** was a clerk in the **Foreign Per Diem Section of the Car Record Office** and in such position he was to determine when per diem was to be allowed on the car hire. He had been in this position 2 to 3 years when the basis for this claim occurred. It was discovered that during the period June 17 through June 20, 1974 certain discrepancies indicating that payments of per diem beyond the car delivery dates had been made, which was an overpayment. As a consequence the errors had a potential loss of \$1562.46 to the **Carrier**. The error was caught by an acting supervisor and **Claimant** made the correction. Based upon errors alleged to have occurred in connection with the notice of the investigation the conduct of the investigation and the predisposition of the **Carrier's** hearing officer this claim was initiated and, subsequently progressed on the property: The **Carrier** denied all charges and this claim was submitted to this Board.

The first object of complaint by Claimant is the notice of investigation submitted to Claimant by Manager-Car Accounts C. O. Wegmann as follows:

"Arrange to report to my office, Room 401, Fourth Floor, General Office Building-South, on Friday, July 12, 1974 at 3:00 p.m., for a formal investigation which will be held to develop facts and fix responsibility, including

yours, if any, in connection with your making over-allowances of car hire to various foreign car owners during the period June 17 through June 20, 1974. These overallowances could have cost the NW thousands of dollars in overpayments."

It is Claimant's contention that this notice fails to meet the rule requirements in that it is not precise as to the charge or charges. We do not agree. As this Board has stated many times the purpose of such notice is to alert the employee to the charges he must face and provide sufficient specificity to enable him to prepare his defense. We believe this was accomplished here and we find no difficulties as suggested by Claimant's representatives. See Awards 11783 and 18606. The latter Award indicated the purpose of such notice is not "to create technical loopholes to permit an employee to escape discipline . . ."

We are further advised that C. O. Wegmann, by virtue of his pre-investigation statements to the Claimant and his references in the above notice manifested that he had prejudged the Claimant. With respect to the notice the phrase in question is ". . . in connection with your making over-allowances of car hire . . ." & addition, reference is made to an interview between Claimant and Mr. Wegmann when the errors were uncovered and this interview is described in the hearing testimony, Mr. V. E. Jones to Mr. Wright (the Claimant):

"79Q. What were you advised by Mr. Wegmann at that time?

A. At the time that I entered Mr. Wegmann's (office), he was very upset and asked me how I could make such a stupid mistake."

With respect to these statements we would be inclined to attach greater significance to them were it not for the fact that the evidence adduced in this hearing was overwhelmingly against the Claimant. The testimony of his supervisor, Mr. Jones, the one who uncovered the errors was direct and explicit. The Claimant himself admitted that he had made the errors and offered no substantial defense. We are mindful that it is dangerous indeed to read into a discipline rule concepts of "due process" and we will have no occasion to do so here save pointing out that a requirement that affords an employee a hearing presupposes that hearing will be fair and impartial. In that connection evidence of a predisposition against the person charged serves to undermine that requirement. For the reasons given, however, here we do not find that these statements prejudiced Claimant.

Lastly, the argument is advanced that Mr. Wegmann served as accuser, judge, and prosecution witness. It is claimed that elementary fairness is impossible under such circumstances; citing awards to that effect.

For the reasons already given we do not believe Claimant was prejudiced. We must point out that Mr. Wegmann was not called by the Carrier as a witness. He was called by the Claimant's representatives. He answered forthrightly and candidly and we do not believe Claimant was prejudiced.

Under all the circumstances we conclude Claimant received a fair hearing and it cannot be said Carrier acted in an arbitrary, discriminatory and uncalled for manner in assessing a ten (10) day penalty of deferred suspension against the Claimant. The infraction was serious and the evidence against the Claimant, including his own admission, was conclusive. The Agreement was not violated.

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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1977.