

2512

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **21426**
Docket Number CL-21596

William G. **Caples**, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (
(The Washington Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-8146,
that:

(a) The Carrier violated the Rules Agreement, effective July 1, **1972**, **particularly** Article 18, when it assessed discipline of dismissal on H. M. ware, **Station Cleaner, Washington, D. C.**

(b) Claimant Ware's record be cleared of the charges brought against him on March 10, 1975.

(c) Claimant Ware be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained in accordance with the provisions of Article 18(h) plus **interest** at six per cent (6%) per annum, compounded daily. Claimant also to be made whole for any money he was required to spend for medical and hospital services, or other benefits which would otherwise have been covered under Traveler's Group Policy GA-23000.

OPINION OF BOARD: On March 10, 1975, Claimant was the incumbent of a regular **position** of Station Cleaner, Washington, D. C. His tour of duty was from **7:30** a.m. to 4:00 p.m. and his-work week **was** from Monday to Friday, with rest days of Saturday and Sunday.

On March 10, 1975, Claimant was notified by letter to report for a hearing at a specified **time** and place on March 14, 1975, "at which time **you** will be charged with:

"Failure to complete assigned **duties** given you by Supervisor of Cleaners, **Mr. M.** Fitzgerald, in the Coach Yard Building, on Monday, March 10, 1975."

The hearing was held on March 14, 1975.

Claimant was notified by letter dated March 19, 1975, from the Engineer Fixed Property that he was dismissed from service.

The position of the Claimant in this appeal is that the following questions should be decided, (1) whether or not the Claimant had a fair and impartial hearing; (2) whether the discipline imposed was warranted, and (3) whether or not his record should be cleared and he be compensated for all monetary loss sustained during the period out of service.

In regard to the first point in **issue, the** Agreement (Article 18 - Discipline Hearings) provides an employe may not be discharged "without a fair and impartial hearing." As a part of that hearing, "At a reasonable time prior to the hearing the employe will be apprised in writing of the precise charge against him." (Underlining the Board's). The written charge in this case is limited and precise, "failure to complete assigned duties." The Claimant argues the **proof went** beyond the specific charge and this Board **must** limit its review only to the facts falling within the charge, citing Third Division Awards 19642 and 19357 where evidence went beyond the precise charge and punishment was given out. In Award 19642 (**Lieberman**) it is said:

"It is fundamental **to the** disciplinary process under the Agreement that Claimant be **permitted** to defend himself against the charges by the Carrier; this is patently impossible if he is not apprised of the precise violation attributed him. Taking the letter of suspension and the record of investigation together it is clear that the Claimant was not afforded due process.

"In Award 14778 we said:

'No **man can** defend **himself** against a **charge** to him **unknown**. Certainly it is not due process to shovel anything and every-thing into a record and leave to the uninhibited hearing officer finding what misconduct he feels the **employe** has **committed**. Issue **must** be joined before hearing.'

Award 19357 (Cole), **in** which a **Claimant** was charged under one rule **and** disciplined under another, is of the **same** view. With both decisions this **Board** is in accord.

In this case the evidence in the record on this precise charge is limited to one instance at **9:30** a.m. in regard to an assignment which the **Claimant** had until 4:00 p.m. to complete. The evidence with this exception was not responsive to the charge and the discipline **cannot** be sustained.

Having so concluded we must address ourselves to the Claimant's request as to "whether or not" Claimant's "record shall be cleared and he be compensated for all monetary loss sustained during the period out of service."

There are two portions of the Agreement (Article 18 - Discipline Hearings) applicable to this, the pertinent parts of which are here quoted:

"(e) If the final decision decrees that the charges against the employe are sustained, the record shall be cleared of the charges; if suspended or discharged, the employe will be

returned to former position with seniority unimpaired and paid for all wages lost.**" (Underlining Board's).

"(h) Deduction of Earnings in Discipline Cases: It is recognized that where an employe is dismissed or suspended from service for cause and subsequently it is found that such discipline was unwarranted and the employe is restored to service with pay for time lost, it is proper that any earnings in other employment will be used to offset the loss of earnings. This understanding is not intended to change existing rules or practices which now provide for deduction of other earnings in discipline cases."

Claimant urges this Board to go beyond this language, which is clear and unambiguous, not only to be compensated for wage loss but in addition to pay Claimant interest at six percent (6%) per annum, compounded daily on such wage loss, "Claimant also to be made whole for any money he was required to spend for medical and hospital services, or other benefits which would otherwise have been covered under Traveler's Group Policy GA-23000."

There is long established precedent for the position that, **claims** for interest or **reimbursement** for health and welfare benefits which are not included in the negotiated rules **agreement** are **not** proper **matters** for consideration by **our** Board. **Many** awards are **cited** regarding our jurisdictional limitation to strict **interpretation of** the contract as written when its **terms** are **clear and unambiguous**. **Awards 12558, 21182, 20711, 20707, 20429, 20383, 20375, 20276, 20013, 19894, 19815, 19616, 19615, 19003, 18471 and many others.**

It is **well** to bear in **mind** Referee **Dorsey's dictum** in 12558:

'We may not inject our predilections as to what is fair, just and equitable. Nor can we engage in speculation as to what might have been in the minds of the parties, but **not evidenced** in the Agreement as executed or otherwise proven."

We find (1) no interest due on wages lost or (2) that Claimant "be made whole for any **amounts** he was required to spend for medical or hospital service" during the period between discharge and reinstatement.

We find the Agreement was violated. In accordance with the terms of Article 18 of the **Agreement, the** Claimant's record shall be cleared of the charges and the employe returned to his **former** position with seniority unimpaired and paid for all wages lost.

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 violated.

A W A R D

Claim sustained. Obligation and liability of the Carrier limited to Article 18 of the Agreement as stated in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

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

