NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21839
THIRD DIVISION Docket Number CL-21727

John P. Mead, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, CL-8155, that:

1. Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it failed to afford Employe P. J. Bisig a fair and impartial investigation.

2. Carrier's action in assessing a thirty day deferred suspension with one year probation was without proper cause and therefore arbitrary, capricious, unfair and unreasonable.

3. Carrier shall now be required to clear Employe Bisig's record of the charges made against her, cancel the discipline assessed and, if loss of time results meantime, compensate her for all time lost.

OPINION OF BOARD: This case is companion to that involving Claimant Mascolo in our Award 21838. Claimant Bisig in this case was a witness who testified in the hearing which resulted in Mascolo's discipline. Following the conclusion of Mascolo's hearing, three charges were preferred against Bisig:

"1. For presenting false information in your notarized stat-t entered as Organization Exhibit D at the investigation held with Mrs. C. Mascolo on February 25 and 27, 1975, said false information being contained in the following quoted portion of your aforementioned notarized stat-t.

' . . . . . '

"2. For testifying falsely at the investigation held with Mrs. C. Mascolo on February 25 and 27, 1975, said false testimony being contained in the following quoted portions of your testimony in the transcript of said investigation.

' . . . . . '

"3. For falsely accusing your supervisors, General Bureau Head James Lynch and Assistant Bureau Head Ruth Schuhrke of falsifying the Record of Arrival of Clerks Form AD 197 a week after July 1, 1974, said false accusation being contained in your notarized statement entered as Organization Exhibit D at the investigation held with Mrs. C. Mascolo on February 25 and February 27, 1975 as well as in your testimony during said investigation."

Claimant here was found guilty on all three charges and assessed a thirty-day deferred suspension with a one-year probation.

In Award 21838 we found that the hearing officer could objectively choose to believe the testimony of his subordinate supervisors and disbelieve the testimony of Claimant Mascolo and her witnesses, but that, given even that judicial discretion, the penalty was too severe. In the instant case we find that the charge against Bisig was more than a matter of choosing to believe the subordinate supervisors as opposed to believing Bisig's testimony given in the earlier hearing. In the instant case, the assistant to the hearing officer in Mascolo's hearing was appointed to act as hearing officer and, as such, had to judge the testimony and beliefs of his superior, a difficult task under the circumstances and atmosphere prevailing, which testimony had to be weighed against that of Claimant Bisig in the earlier hearing. Carrier had the burden of proving that Claimant Bisig, in the Mascolo hearing, purposely testified to that which she knew, or at least suspected, was not truthful.

In view of all the circumstances, we find that Carrier failed to fully support all of the charges against Claimant. Without specifically pointing out all of the facts which lead to our conclusion, it is noted that Carrier's charges amounted to an accusation of dishonesty. A thorough examination of the record submitted here does not convince the Board that the required degree of proof for fully sustaining such a charge was met; Carrier made no effort to show intent. We can agree with the hearing officer in the prior case, Award 21838, and also with the employes here - the statement relative to supervisors returning late was not relevant. We must also add, however, that an employe making a charge against supervisors should be better prepared to prove same than was evident in this case.

The entire affair involving the supervisors, Claimant Mascolo in Award 21838, and Claimant Biaig herein, certainly cannot be held out as a model for proper employe-employer relations. In our Award 21838

we stated that supervisors should not give orders that would tend to provoke their subordinates. Here, in view of the entire record, it appears that the other side of that coin applies. Subordinates should not make accusations that would tend to provoke their supervisors. We are convinced that, had the irrelevant statements accusing the supervisors not been made in the earlier case, the present case would not be before us.

Discipline should be designed to turn employes toward a proper course of conduct. With that in mind, we find that review of the entire record would support only a reprimand. We therefore order that the discipline assessed be converted to a reprimand and the records corrected accordingly.

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 Rmployes 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

The discipline was excessive.

A W A R D

Discipline reduced to a reprimand as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Panka
Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1978.