NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21957
THIRD DIVISION Docket Number CL-22089

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8362) that:

(a) Carrier violated the Agreement at Chattanooga, Tennessee, when it dismissed Mr. Curtis Hester, Storehouse Employee, from the service of the Carrier effective November 26, 1975, for alleged conduct unbecoming a* employee.

(b) Mr. Hester shall be restored to the service of the Carrier with seniority and all rights unimpaired, and compensation for all time lost.

OPINIONOFBOARD: On November 11, 1975, after having heard several employes discussing claimant's guilty plea to a charge of assault with intent to commit voluntary manslaughter with a pistol, claimant's supervisor immediately acted to obtain confirmatory information. The Company police department's field officer filed a report with Department Headquarters in Washington, D. C. on November 21, 1975, which was subsequently forwarded to the Supervisor.

The field officer in his investigation acquired copies of the Grand Jury charges and court records, wherein the Grand Jury charged claimant as follows:

> "That Curtis Hester heretofore on the 4th day of July, 1975, in the County aforesaid, did unlawfully, feloniously, wilfully, deliberately, premeditatedly, maliciously and malice aforethought assault Robert Atkins with a certain dangerous and deadly weapon, to-wit: a pistol with intent at the time to unlawfully, feloniously, wilfully, deliberately, premeditatedly, maliciously, and of malice aforethought kill and murder the said Robert Atkins, against the peace and dignity of the State."

Moreover, the Court records further indicated that claimant had pleaded guilty to the charges on November 13, 1975. These records were incorporated as part of the investigative transcript.

The **Supervisor** after receiving the report contacted claimant to discuss this matter with him. Claimant declined the Supervisor's invitation to have a union official accompany him and was permitted to call his attorney. lie thereafter admitted that he had pleaded guilty to the charges. The Supervisor then verbally suspended him for conduct unbecoming an employe and confirmed this action in a letter dated December 2, 1975 to claimant's representative. The Organization responded that claimant was not advised of the charges in writing.

After reviewing this contention we find that claimant's substantive rights were strictly observed. The purpose of the notification of charge rule is to afford the claimant sufficient knowledge of the charges against him to prepare an adequate defense. He was made sufficiently aware of the charges on two occasions: in the conversation with his Supervisor and in the December 2, 1975 letter. Accordingly, we find that his substantive rights were not prejudiced in any manner. It is well established decisional law that procedural issues do not prejudice or set aside discipline impositions when substantive rights were afforded. See Third Division Award No. 20331 among others.

The Organization has also argued that claimant was disciplined more than thirty (30) days after the event because the dismissal was based on an incident occurring on July 4, 1975 and he was not dismissed until November 26, 1975. It is clear that Carrier did not have "knowledge"-until the Supervisor received the report which happened only after November 21, 1975. Third Division Award No. 21761 is explicitly on point with this requirement.

It is beyond doubt that claimant pleaded guilty to a very serious criminal charge. It was also clearly established that the incident was reported in the media (newspaper and television) and that claimant was named as a Southern Railway employe. Two Awards (Third Division Award No. 19486 and Second Division Award No. 5681) are particularly applicable here.

Referee Brent stated in Third Division Award No. 19486:

> "This Board has taken the position that Carriers are not required to retain employees who are dishonest or bring discredit to the carrier in their service. The Board has also held that where the claimant was afforded

"a fair and impartial hearing and the action of the investigation was neither arbitrary, capricious or in bad faith, the action of the carrier should not be disturbed."

Referee Ritter seated in Second Division Award No. 5681:

"The Carrier is under no contractual obligation to retain in its employment employees that it has just reason to believe are quarrelsome, antagonistic or of a dangerous character."

Thus, after careful review of the entire record we find that claimant was afforded a fair and impartial hearing, that the discipline invoked was not arbitrary, unreasonable or capricious and that Carrier's right to dismiss an employe whose conduct brings unmistakable discredit to his employer as well as posits potential danger to Carrier's operations is consistent with established Third Division holdings.

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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1978.