

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22521
Docket Number SG-22517

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Seaboard Coast Line Railroad Company:

Claim on behalf of Mr. L. C. Pugh, Signalman, in Signal Gang No. 7, for reinstatement to his former position, with all rights restored and reimbursement of all monies lost account of his dismissal on June 27, 1977, when Carrier did not afford him with a fair and impartial hearing on June 14-15, 1977."
/Carrier file: 15-47 (77-2) J/

OPINION OF BOARD: On June 3, 1977, claimant was instructed to attend formal investigation:

"....to develop the facts and place your responsibility in connection with recent incidents in which you have been involved, some of which are listed below:

- 4/25/77 Unauthorized absence and failure to notify intention or need for absence. (Rule 709).
- 4/27/77 Cutting out a 'working' signal case between Leeds and Landrum, S. C. (Incompetence).
- 5/12/77 Cutting out highway signal case that was still working and in service. (Incompetency and failure to follow instructions).
- 5/16/77 Unauthorized absence from job without notice or permission. (Rule 709)
- 5/31/77 Insubordination, vicious and uncivil language and conduct while refusing to paint signal as instructed by Mr. E. L. Wilkes. Witnessed by Mr. D. R. Croslyn. (Rule G).

"In connection with the above, you are charged with possible violation of those parts of Rule G-1 relating to disloyalty, desertion, vicious or uncivil conduct, insubordination, incompetency, making false statements and Rules 701, 709, 1181.

Your personal record will be reviewed.

You may be represented at this investigation in accordance with the Agreement under which you are employed."

Following a rather lengthy investigation conducted on June 14 and 15, 1977, claimant was notified on June 27, 1977, of his dismissal:

"This refers to investigation conducted by Trainmaster E. H. Croom in Abbeville, S. C., on June 14 and 15, in which you were charged with rule violations for various reasons on various dates.

"This is to advise that the transcript of this investigation reveals that you were clearly in violation of those parts of Rule G-1 relating to disloyalty, desertion, vicious or uncivil conduct, insubordination, and Rule 1181 for your action on May 31, 1977, when you failed to follow instructions of Mr. E. L. Wilkes, Assistant Signal Construction Supervisor, concerning the painting of signals.

"You are hereby dismissed from the services of the SCL Railroad for your violation of the above-mentioned rules.

* * * * *

"During the course of this investigation, you were advised that you would be charged with insubordination if you continued to refuse to answer questions needed to develop pertinent facts concerning the matters under investigation, and you were so charged. The investigation covering these latest charges will not be scheduled for now since the previous charges resulted in dismissal.

"A copy of the transcript is attached."

The claimant was present throughout the investigation and was represented by the General Chairman of the Organization. At the insistence of the claimant and the General Chairman, a Director of Affirmative Action and Field Operation, Florence County Office of Economic Operation, was permitted to sit in on the investigation as an observer, which was beyond the requirements of the Agreement. The General Chairman of the Organization engaged in extensive questioning of all witnesses throughout the investigation. The only exception taken to the letter of charge was that it contained several different charges "at one investigation."

The Discipline Rule of the Agreement under which the investigation was conducted permitted the claimant to call witnesses to testify in his behalf.

Following claimant's dismissal, in the handling of the dispute on the property, the General Chairman contended that a fair and impartial investigation was not conducted by the interrogating officer; protested the Carrier charging claimant with multiple charges; contended that certain witnesses were not called, and contended that he (the General Chairman) was not given the opportunity to ask questions many times during the investigation.

We have carefully reviewed the entire transcript of the investigation and do not find sufficient support for the General Chairman's contentions to vitiate the entire proceedings. The interrogating officer was persistent in his questioning of the claimant. However, the claimant was evasive in his answers, at times to the extreme. It was up to the interrogating officer to conduct the investigation in an orderly manner, and while he (the interrogating officer) was persistent in his questioning of claimant, his persistence did not necessarily constitute prejudice or render the investigation void.

So far as multiple charges are concerned, the Discipline Rule of the Agreement provides that the accused will be advised in writing of the "exact charge or charges which have been made against him." There is, therefore, no basis for the contention concerning multiple charges.

As to witnesses being present, all witnesses requested by the claimant or his General Chairman were present, and, in addition, the interrogating officer offered to postpone the investigation so that the General Chairman could procure further witnesses; however, the General Chairman elected not to postpone the investigation. The Organization has no proper basis for complaint in this respect.

As to the contention that the General Chairman was not permitted to ask questions many times during the investigation, the transcript shows extensive questioning of practically all witnesses by the General Chairman, although at times he was told by the interrogating officer that he would have to wait his turn to speak. We see nothing improper or prejudicial by this.

In its submission to the Board the Organization reiterates about the same contentions raised by the General Chairman in the appeal on the property, and also complains that the introduction of claimant's past record in the investigation precluded a fair and impartial hearing. Although a few awards have held it to be improper to include an employee's past record in the transcript of the investigation, other awards have held to the contrary, where the past record was not used to determine guilt, but for the purpose of determining the discipline to be imposed for a proven offense. This Referee agrees with the latter group of Awards. See recent Award 22460. It is also worth noting in the present case that the claimant was advised in the notice of charge that his personal record would be reviewed, and no exception was taken to this portion of the charge by the claimant or his General Chairman, either in the investigation or in the on-property handling. It is too late for the issue to be raised for the first time before the Board.

Also in its submission to the Board, the Organization contends that the hearing officer "did in fact advise the claimant that a charge of insubordination would be filed against him because he did not answer the question in the manner the hearing officer wanted him to answer." The hearing officer was seeking an unequivocal answer to a question having a direct bearing on the subject then at issue. We have carefully reviewed the on-property handling following claimant's dismissal, and we do not find that this issue was directly raised in the appeal procedure. This would be proper basis for dismissing the contention raised for the first time before the Board. However, we think it more important

that the insubordination issue raised in the Organization's submission was not in connection with the charge for which claimant was dismissed, i. e., his actions on May 31, 1977.

As heretofore indicated, based upon our careful consideration of the entire record, we do not find sufficient irregularities in the manner in which the hearing was conducted to void the entire proceeding, especially when we bear in mind the charge upon which claimant was dismissed.

As to the merits of the dispute, there was substantial credible evidence in the investigation concerning claimant's actions on May 31, 1977, to support the charge for which he was dismissed. There was direct evidence that he was insubordinate to and made threats against supervisory personnel. The claimant was guilty of conduct that simply cannot be condoned.

The claim will be denied.

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. Paulke
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1979.