NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22888
THIRD DIVISION Docket Number CL-22794

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8702) that:

1. Carrier acted in an arbitrary and harsh manner when it violated the agreement in assessing Clerk R. D. Abernathy fifteen (15) days actual suspension for failure to properly redress grievances concerning matters pertaining to his work, absenting himself from duty without proper authority by going downstairs to the parking lot to his car, and possessing a firearm on company property on the morning of November 11, 1976.

2. Carrier shall compensate Clerk Abernathy for each day lost commencing with Friday, December 10, 1976 through December 24, 1976 and including holiday pay for December 24 and December 25, 1976 as a consequence of this investigation. Mr. Abernathy will be paid $52.86 per day, his daily rate of pay plus holiday pay, total amount due $634.32.

OPINION OF BOARD: An investigation was held on November 18, 1976 to determine Claimant's responsibility, if any, in connection with his letter to the Executive Vice Resident, dated October 28, 1976, his alleged absence from his assignment on the morning of November 11, 1976 at approximately 10:00 AM and his possession of a firearm on Company property. Carrier subsequently notified him on December 6, 1976 that he was found guilty of the specifications and he was suspended from service for fifteen days beginning December 10, 1976. This disposition was appealed on the property pursuant to Agreement rule and is presently before this Division for appellate review. In defense of his position Claimant contests both the conduct of the investigation and the substantive basis for the conclusion reached.

In our review of the case, we concur with Carrier that the hearing was properly conducted, although we caution its administrative officials that a disciplinary investigation is not a formal judicial trial in the literal sense of the term, but a fact finding procedure, that is sufficiently flexible to gather the truth.

We do find, however, compelling merit to Claimant's contention that the evidence adduced fell short of that requisite quantum of proof needed to satisfy the requirements of the substantial evidence rule and thus we are constrained to sustain the claim.

Specifically, we do not find that the October 28, 1976 letter to the Executive Vice Resident was an explicit manifestation of classic insubordination, since it was written to alert top management that he was directed to violate a safety rule. There is not an improper method of notification when the circumstances underlying its promulgation are considered.

Similarly, we do not find substantive merit to the specification that he absented himself without permission that morning. Careful reading of the investigative transcript within the context of observable and de facto permitted practices indicates that it wasn't unusual for employes to leave momentarily their assigned work stations without formal permission to go to their automobiles to obtain or deposit therein personal property. Admittedly, there is some basis for the correlative specification that he was in possession of a firearm on the property, contrary to regulation, but we believe that it is persuasively offset and mitigated by the fact that it was given to him by the Assistant Terminal Trainmaster to consider for possible purchase. When these facts and circumstances are objectively assessed, we find that Carrier acted harshly and arbitrarily in meting out the disputed punishment. We will affirm the claim.

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

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1980.