

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22895
Docket Number CL-23023

Martin F. **Scheinman**, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: {
(Chicago, Rock Island and Pacific
(Railroad Company (William M. Gibbons,
(Trustee)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (**GL-8854**)
that:

(1) The Carrier violated the terms of the Clerks' Agreement, particularly Rule 39, Rule 41 and Rule 44 thereof when on March 6, 1978, without cause it assessed thirty (30) demerits against the personal record of Clerk D. L. Jefferson.

(2) The Carrier shall now be required to **remove** the demerits mentioned in (1) above, thus clearing Clerk Jefferson's record of any mention of this discipline.

OPINION OF BOARD: Claimant, D. L. Jefferson, Train Order Clerk in Utica, Illinois, after investigation, was assessed thirty (30) demerits by Carrier. Claimant was charged with (1) failing to keep current demurrage records, and (2) failing to keep proper CT-42 reports. The discipline imposed resulted from an Audit that was conducted on February 2, 1978.

The Organization contends that Carrier failed to establish that Claimant violated any rules. It asserts that the discipline **stemmed** from the fact that **Trainmaster E.** O. Garlinghouse intended, and previously expressed, his intention to have **Claimant** dismissed from **service**. Since Garlinghouse was the conducting officer at the investigation, the Organization also argues that Claimant **was** denied a fair and impartial investigation.

We will first address the arguments on the merits. The evidence presented indicates **that** Claimant is **guilty** as charged. The **Audit** established that Claimant's **demurrage** records were not current. The amount of the delay was clearly unusual. The Audit also showed that the CT-42 reports that **Claimant** was required to complete did not reflect **all** cars in the yard. The Organization failed to introduce any evidence to **show** that the Audit was falsified or in any way incorrect.

Moreover, Claimant's explanations as to why the reports were inaccurate are not persuasive. As an **employee** of Carrier for 27 years, it is certainly reasonable to expect that he understood the procedures for filling out such reports. In fact, the testimonies of other witnesses who had performed in relief of Claimant indicated that they were fully knowledgeable about keeping demurrage records and CT-42 reports. Therefore, we **must** conclude that the Employees' claim, as to the merits, must be rejected.

The central core of the Organization's claim is that Carrier did not provide **Claimant with** an impartial investigation.

It is fundamental that an **employee** is entitled to an objective and unbiased investigation. The hearing must be fair, even handed, and complete. This Board has repeatedly set aside discipline when the hearing officer failed to conduct the investigation objectively and impartially. See for example, Third Division Awards 17156, 20014, and 22681.

Here, the record discloses that a full and fair hearing was provided. Claimant was given a right to representation. Those representatives were not inhibited from presenting their case. The transcript indicates that the representatives were able to call witnesses to support Claimant's assertions. Full examination of those witnesses was permitted. Similarly, cross-examination was not in any way limited. In sum, there is nothing to suggest that the hearing officer attempted to preclude the Organization from presenting relevant evidence and arguments.

While it is admittedly unfortunate that Carrier provided a hearing officer who was so unacceptable to the Organization, the fact remains that the record is not sufficient to support a finding that Claimant was deprived of the protections and procedural safeguards he is entitled to. In all, we are not persuaded that Claimant was denied an impartial investigation. Therefore, the claim is **dismissed**.

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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the **Railway** Labor Act, as approved June 21, 1934;

Award Number 22895
Docket Number CL-23023

Page 3

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. Pauls
Executive Secretary

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