

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23340
Docket Number SG-23156

Arnold Ordman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{
(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:

On behalf of Signal Maintainer J. E. Williams, Franklinton, North Carolina, who was assessed thirty days actual suspension for alleged violation of Rule G-1, that the suspension be revoked and all reference or this investigation be stricken from his personal file." (Carrier file: 15-47(79-1)J)

OPINION OF BOARD: After investigation in which Claimant was found guilty of insubordination and willful neglect, Claimant was suspended from the service of the Carrier for thirty (30) days. Rule G-1 of Carriers Operating Rules lists insubordination and willful neglect among offenses which will subject the offender to dismissal.

The Brotherhood asks for revocation of the suspension and other relief on the ground that Carrier did not afford Claimant a fair and impartial investigation; limited the right of Claimant's duly accredited representative at the investigation to ask all the questions he wanted; and did not prove Claimant's guilt. Rules 47 and 48 of the Agreement provide, in relevant part, that employee not be disciplined or dismissed without a fair and impartial investigation; that an accused employee and his accredited representative have the right to question and cross-examine all witnesses; and that, if charges should not be sustained, such charges shall be stricken from the record, and reinstatement and make whole provisions to the extent required, be accorded.

We have carefully reviewed the entire transcript of the investigation and find substantial probative evidence to support the conclusion that Claimant knowingly disobeyed an order of his superior to walk the track to locate a source of signal trouble and that this disobedience constituted insubordination and willful neglect. To be sure, the record is not free of conflicting testimony in a number of respects. However, it is not the Board's function to resolve or evaluate conflicting testimony given at a hearing. See Third Division Awards Nos. 9230 (Begley); 10113 (Daley); 20034 (Eischen); and 20030 (Eischen). Appraised on this basis, the record affords adequate evidence to establish Claimant's culpability.

Nor is there reason to challenge the discipline meted out to Claimant for his offense. Rule E1 of Carrier's Operating Rules permits discharge for the offense here found. But there only a thirty-day suspension was imposed notwithstanding Claimant's personal record which revealed prior offenses. Hence, it is hardly necessary to invoke the principle, enunciated in two of the four Awards already cited, that it is not within the Board's province to substitute, in disciplinary matters, its judgment for that of the Carrier unless the discipline imposed is harsh or excessive.

There remains for consideration only the contention that Claimant was not afforded a fair and impartial investigation. The two premises for this contention are (1) that Carrier prejudged the case and took Claimant's personal record into account in determining his guilt; and (2) that Claimant's accredited representative at the investigation was unduly circumscribed in questioning witnesses. We are satisfied upon our independent review of the evidence that neither premise has support in the record. As already noted, the record amply supports a finding of guilt without reference to Claimant's personal record, a record which can, however, properly be taken into account, after guilt is established, to determine appropriate discipline. In addition, we are satisfied upon our review, that no line or questioning, relevant to the instant dispute, was foreclosed. See Third Division Award No. 22521 (Carter).

FINDINGS: % 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;

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. Pugh

Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1981.