NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24181
Docket Number CL-23897

Robert E. Peterson, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9348) that:

(a) Carrier violated the Clerks' Agreement at Argentine, Kansas, when it removed L. E. Stinnett from its service as a result of investigation held on January 17, 1980.

(b) L. E. Stinnett shall now be reinstated to Carrier service with all rights unimpaired and compensated for all monetary loss suffered on his Rate Clerk position at Argentine as a result of being removed from service.

(c) In addition to the monies claimed, L. E. Stinnett shall now receive ten per cent (10%) interest on monies claimed, such interest to be compounded on each and every pay period from January 17, 1980 forward for the period of time Claimant is held out of service (40 hours per week).

OPINION OF BOARD: The basic facts in this case are not in dispute. Claimant was working as a Rate Clerk in Carrier's Station Department when he became engaged in an argument with a fellow employe concerning the use of a company telephone which they shared. The argument came to be of such intensity that it attracted the attention of Carrier officials several offices removed from the scene of the controversy, and brought the work of other employee in the immediate vicinity to a standstill. When a supervisor of the disputants attempted to intervene and have them go back to work, Claimant continued his harangue, telling the supervisor: "Ed...you don't know what's going on you have been on vacation, you go back and sit down." When the supervisor's continuing efforts proved unsuccessful in having the Claimant return to work, it was necessary for the supervisor to bring Claimant to the Manager, and then to the office of the Regional Director of the Revising Department in further attempts at calming the Claimant. Although discussions between the Claimant (in the company of a Brotherhood representative) and the several Carrier supervisors and officials did not significantly alter his attitude, Claimant was permitted to return to work. A short time after being back at work, and when the supervisor who had first attempted to calm the Claimant was returning to his desk, Claimant approached him and made threatening remarks to him, stating, according to the supervisor:

"Lloyd come up to me and he says Ed he says I am going to beat the (expletive deleted) out of you. 1% going to catch you either in the parking lot or somewhere else and he said I've had bigger guys than you."

The Claimant does not deny having made such remarks to the supervisor, but refers to them as *an idle threat." The supervisor did not consider the remarks to be merely an idle threat. He promptly reported them to his superiors, and at the formal hearing also testified to having received threatening telephone calls the next evening while at home, a matter which he had likewise immediately reported to his supervisor and the local police. It was the supervisor's contention Claimant had made the calls to his home, asserting he recognized Claimant's voice from past conversations with him over the telephone and recognized the threats being voiced as similar to that which Claimant had initially expressed to him at the office. A witness to the office threat also did not consider the remarks to represent an idle threat. When asked at the hearing whether Claimant's remarks were not more the supposedly acceptable vernacular Of "yard office talk," or more In the nature of "a joke," the witness replied: "Not really, not in that kind of tone...I believe there was more than that in Mr. Stinnett's voice because he was upset.' Further, that Claimant is a volatile person is demonstrated by his own testimony at the hearing. In this regard, we have taken special note of the following colloquy, with the initial question being asked by the hearing officer:

"Q. Mr. Stinnett, if you had the whole thing to do over do you think it could have been resolved at your desk on the initial approach of Mr. Warkentine?

A. Now I think it can after all this come about.

Actg. Supt. Wells - Mr. Clark?

REPRESENTATIVE J. R. CLARK QUESTIONS RATE CLERK L. E. STINNETT:

Q. Mr. Stinnett, I would like to explore your answer to the last question just a little bit. You say now you think the thing could have been resolved since it all came 'out. Was your purpose or do you think that now everyone concerned would take a little different approach, Is this your... (Mr. Clark is interrupted.)

A. No. With me it was the attitude that sometime I can come to work and be in a fantastic mood and can work an hour or an hour and a half and someone can really spoil. It for me and blow my whole day. It really can.'

The above facts and circumstances notwithstanding, it is the Brotherhood's position that certain procedural errors committed by the Carrier call for the claim to be allowed. It maintains the notice of investigation did not advise Claimant of the precise nature of the charge lodged against him; the Claimant was denied a fair and impartial hearing; and, by calling the Brotherhood representative who had been at the office meting as a witness for the Carrier, the Carrier had prevented Claimant from having the representative of his choice represent him at the formal hearing. In addition, the Brotherhood alleges the discipline administered was not reasonably related to the circumstances involved and was so harsh and cruel as to amount to a gross breach of managerial discretion.

A careful examination of the voluminous record fails to support the contention Claimant had not been afforded his fundamental rights to due process. The hearing notice was specifically precise and clear. It properly notified Claimant of the charge, fully apprising of the nature and purpose of the hearing. A rather extensive hearing transcript attests to Carrier's objectivity in ascertaining all pertinent facts. In addition to testimony of the Claimant and the second employe who had been engaged in the initial argument, there is testimony of nine witnesses who had teen called either by the Carrier or the Brotherhood. We are satisfied from our reading of the transcript that the hearing was conducted fairly and impartially, and that Claimant had his representative were afforded every opportunity to present evidence and to examine and cross-examine each of the witnesses.

In respect ix the protest Claimant had been denied benefit of a Brotherhood representative of his choice, the applicable rule provides only that at an investigation an employe "may be assisted by his duly accredited representatives." It doss not stipulate a representative of his first choice, nor may the contractbe so interpreted to mean or imply such right. Further, as concerns Carrier's action in calling as a witness at the hearing, the representative who Claimant alleges was his first choice of a representative to represent him at the formal hearing, we believe that Carrier had acted in a proper manner. This representative had been present at the joint meeting in Carrier's office, and had, according to testimony of other witnesses, told Claimant at the meeting that he should follow instructions and not quarrel or be argumentative with other employes. Under the circumstances, we fail to comprehend the basis for the Brotherhood's argument that Claimant was denied a representative of his choice. We say this in the further belief that had the Claimant and the Brotherhood so desired, the representative could have appeared at the hearing as both a witness and the Claimant's representative. In any event, a review of the record does not show that Claimant was deprived of representation, and the Brotherhood representative who did represent Claimant, although he may not have been the Claimant's first choice, fully and competently represented Claimant at the hearing.

As to the discipline as imposed, there is no doubt Claimant displayed an insubordinate and hostile attitude towards his supervisor in threatening him with bodily harm. Further, by his own testimony, Claimant demonstrates he has a volative disposition subject to sudden emotional demonstrative swings. Certainly, under the circumstances of record, it cannot be said that Carrier was arbitrary or unreasonable in dismissing the Claimant from its service.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February 1983.