

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24364
Docket Number SG-246'73

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company:

Case No. F-1098

(a) The Carrier violated the Signalmen's Agreement, as amended, particularly Rule 32, the discipline rule, when on April 14, 1981, it imposed excessive discipline (dismissal from service) on Mr. T. M. Bartels for his alleged responsibility in connection with falsely advising the carrier of his home address. in order to become eligible for payment of meal and lodging expenses.

(b) The carrier should now be required to reinstate Mr. Bartels to his former position at Merriam Park (St. Paul) with all rights and benefits unimpaired and compensate him for all time lost until he is reinstated."

OPINION OF BOARD: Claimant, a Signalman, was employed in a type of service which, under certain conditions, qualified him for meal and lodging expense under Rule 24 of the applicable Agreement. Rule 24 of the Agreement contains the following NOTE:

"NOTE: No meal or lodging allowance will be made for any meal or lodging expense not actually incurred by the employee and no meal or lodging allowance will be provided when the employee's (sic) home is within thirty (30) miles of headquarters."

There is no dispute that prior to February 17, 1981, Claimant resided at Newport, Minnesota. On that date Claimant had a discussion with the Foremen of the crew as to whether or not he was entitled to the meal and lodging benefits of the Agreement. The Foreman advised the Claimant he was not entitled to such benefits because his home was less than thirty miles from the job site. In a statement of the Foreman, made in field investigation conducted on April 9, 1981, he stated:

"... I again informed Mr. Bartels he wasn't entitled to a room and meals. At this time, Mr. Bartels made the statement 'I will show you how the big dogs play the game,' then made out a change of address form, sent a wire to the Chicago office informing them of his address change to Hastings, Minnesota, approximately 34 miles from the job site. At approximately

1:00 P.M., I called Mr. E. R. Hubley, Signal Engineer, et Chicago, informing him of the problem and Let him talk to Mr. Bertels. After he was done talking to Mr. Hubley, I again talked to Mr. Hubley, end Mr. Hubley informed me that Mr. Bertels was entitled to a room and meals end I should enter them on the time sheet, which I did."

Because of whet the Carrier considered questionable circumstances surrounding Claimant's submitting a change of address on February 17, 1981 end thereby becoming eligible for meal end lodging allowance under the Agreement, en investigation was begun by the Carrier to determine Claimant's actual residence.

On March 23, 1981, Claimant was notified:

"You are hereby notified that a formal investigation will be held et 9:00 A.% Wednesday, April 1, 1981 in the Engineering Office, Minneapolis Depot; Minneapolis, Minnesota, for the purpose of developing all the facts end circumstances in connection with the following charges:

1. On Tuesday, February 17, while 'employed es • signalman in Foreman Carlson's signal crew, falsely advising your for- end the Chicago Office that you had changed your home address from 1825 First Avenue, Newport, Minnesota, to 537 McNamara, Hastings, Minnesota, in order to become eligible for payment of meal expenses on the dates of February 17, 18, 19, 20, 23, 24, 25, 26 end 27, end March 2, 3, 5, 6, 9, 10, 11, 12 end 13, 1981.
2. Cm Tuesday, February 17, while employed es • signalman in For- Carlson's signal crew, falsely advising your for- end the Chicago Office that you had changed your home address from 1825 First Avenue, Newport, Minnesota, to 537 McNamara Avenue, Hastings, Minnesota, thereby requiring the Milwaukee Railroad to pay for motel rooms to which you were not entitled on the nights of February 17, 18, 19 and March 5, 1981.
3. In connection with the above two incidents, violation of Rule 24, Section 5 "Note" of the Agreement between the Chicago, Milwaukee, St. Paul end Pacific Railroad Company end Brotherhood of Railroad Signalmen, end Rules 700, 700B and M-702 of the Operating Rules for Employees in the Maintenance of Way end Structures end the Signal end Communication Department, Form 3597 Revised."

The rules referred to in the letta of charge were reed into the investigation, conducted on April 9, 1981. They are also quoted in the Cerrier's submission, ere part of the record before the Board, end we see no necessity for repeating them here. The investigation, originally scheduled for April 1, 1981,

was postponed to April 9, 1981, following which Claimant was notified on April 14, 1981, of his dismissal from service.

A copy of the transcript of the investigation conducted on April 9, 1981, has been made a part of the record. In that investigation substantial evidence was produced that Claimant had not actually changed his address from Newport, Minnesota, to Hastings, Minnesota. Claimant contended that he moved back to Newport from Hastings on February 20, 1981, and that the foreman was aware of his moving back to Hastings. The foreman denied that Claimant said anything to him on February 20, 1981, that he had moved back to Newport. Claimant admitted, however, that he did not file a change of address, when he allegedly moved back to Newport from Hastings on February 20, 1981.

It was developed in the investigation that Claimant was paid the meals and Lodging allowance on the dates specified in the letter of charge. Claimant's statement about his checks being sent to the Hastings Depot, picked up by his wife, who deposited them in the bank and filed the stubs, that he never saw the stubs and had no knowledge as to just what he was paid for, is not persuasive. Neither are his statements about being under stress, harassed, etc. None of these situations would justify a violation of the rules.

The Organization, in its submission, contends the Carrier violated Rule 32(e) of the Agreement, especially that portion reading:

"After the date the notice to appear for the investigation has been issued and prior to the date of the investigation, the employee cited to appear for the investigation may, in company with his duly authorized representative(s), confer with the officer of the carrier preferring the charge(s) against the employee for the purpose of reaching an agreement on the validity of the charge(s) preferred against the employee and the proposed discipline to be administered."

This matter was brought up in the investigation by Claimant's representative questioning Carrier's Signal Engineer:

"1.50. Mr. Hubley, did on or about April 2, 1981, did you have telephone conversation with Mr. Bertels at which time he asked you requested a pre-hearing conference, which is permissible under our schedule, Rule 32, Paragraph E?

A. That is correct.

151. Was this conference denied?

A. Yes.

152. Even though that this is a violation of our agreement?

A. No, sir, not a violation. He asked for this pre-hearing conference to one of the things he brought up that he would like to pay for the meals and the room that he had taken.

153. Let me read Rule 32, Paragraph E.

(The above quoted portion of Rule 32(e) read.)

At the time of this telephone call, he was merely asking for a pre-hearing conference; he did not ask his representative with him.

A. He did not have his representative with him. That's right."

On further questioning by the conducting officer, the Signal Engineer testified:

"158. At any time after the notice of investigation was issued, were you contacted by a member of his union or a representative of Mr. Bartels?

A. Uh, the only contact I had was when Leo came in the office, I believe it was Monday we had, when he was in company with the vice president, with Harwell, and we brought up the investigation and I don't recall the conversation on that but I did inform him it would be on the 9th, but Leo had already knew this.

159. Was there any request at that time for a pre-investigation hearing?

A. I don't believe so."

It would appear that the entire issue of Rule 32(e) was loosely handled by both sides. The Claimant was not "in company with his duly authorized representative(s)", which is a requirement of the rule, and the testimony of the Signal Engineer was to the effect that what Claimant wanted to discuss with him was the possibility of paying for the meals and the room. We do not think such was the purpose of Rule 32(e). We do not consider that Rule 32(e) was violated. A review of the correspondence covering the on-property handling shows that the primary contention of the Organization concerned the amount of discipline imposed, taking the position that dismissal was excessive. While there was a general allegation that Rule 32 was violated, there was no specific mention of Rule 32(e) or the manner in which the Organization considered it violated. It is well settled that this Board, being an appellate tribunal, may only consider issues and defenses raised by the parties in the on-property handling. Further, general allegations may not be made in the on-property handling and specifics provided for the first time in presentation to the Board.

Also, in its submission to the Board the Organization complains that the same Carrier officer preferred the charges, issued the discipline, and denied the initial appeal. We do not find that any such complaint was made in the on-property handling and it, therefore, is not properly before the Board for consideration.

On the record before us, there is no proper basis for the Board to interfere with the discipline imposed by the Carrier. Considering the nature of the offense, and Claimant's prior record, which was raised by the Carrier in the handling of the dispute on the property, the discipline imposed was not excessive.

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: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May 1983.