

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24546
Docket Number CL-24776

Paul C. Carter, Referee

PARITES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(
(Baltimore and Ohio Chicago Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood IGL-96421
that:

(1) Carrier violated the Agreement between the parties when on December 23, 1981, it imposed discipline of dismissal from Carrier's service upon Stores Counterman **Mr. D. B. Lightfoot**, Stores Department, **Barr** Yard, Chicago, Illinois, as a result of an **investigaton** held **in** absentia on December 17, 1981, which action was prejudiced and unjustified, and

(2) As a result of such impropriety, Carrier shall be required to reinstate **Mr. D. B. Lightfoot** to his former position with seniority rights unimpaired and compensate him for all lost wages commencing with the date of December 23, 1981.

OPINION OF BOARD: Claimant was employed as a counterman in Carrier's Car Shop Storeroom, Barr Yard, Chicago, Illinois. On November 10, 1981, he was assigned to loading draft gears onto a pallet in the storeroom. The Carrier contends that although claimant had strict instructions to the contrary, rather than using an available forklift, he began standing the draft gears upright on the pallet by lifting them himself. At about 1:50 P.M. claimant notified his supervisor that he had been injured. When the supervisor arrived on the scene, claimant was asked to fill out a Personal Injury form. He did not complete what is referred to as Item 7 of the form as to "**nature and extent**" of the injury being reported. The Carrier arranged for claimant to **receive** medical attention, but even after such medical attention he would not complete Item 7 of the Personal Injury form.

On November 12, 1981, claimant was notified by Carrier's Assistant Manager Terminal Services:

"Attend investigation in the Conference Room, Barr Yard Annex Building, 733 West 136th Street, Riverdale, Illinois, at 9:00 A.M. Tuesday, November 17, 1981.

You are charged with failure to handle Draft Gear, Pat. #1914479, as reported on your Form CJ-68, in a **manner** that would prevent alleged personal injury to yourself **at** approximately 1:50 P.M., November 10, 1981, and failure to complete Form CJ-68 as instructed by Manager Terminal Services W. E. Whalin.

You are responsible for arranging for a representative and any witnesses you may desire.*

The investigation was postponed on two occasions at the request of the Division Chairman of the Organization as result of which it was scheduled for December 17, 1981. No further request was made for postponement by the Organization representative or by the claimant. Neither **claimant** nor his representative appeared at the investigation as result of which it was held in absentia. One Carrier Officer, the Assistant Manager Terminal Control, testified as to his conversation with claimant's local chairman as to whether he would represent claimant at the investigation or request a postponement, and the local chairman's reply to both questions was **"No."** The same Carrier Officer stated that claimant had not requested a postponement of the investigation set for December 17, 1981. He testified that he had received a letter from claimant stating, among other things:

"No. 3. About my investigation, it will be up to the doctor if I will be able to make it, he will let you and Mr. **Brunke** know (spelled **no**), by mail or phone.'

He went on to state that he had received no **telephone** message or written message by Mr. Lightfoot's doctor, C. Scott, or any other doctor. There is no evidence in the record that claimant was so disabled that he could not have requested a **postponment** of the investigation, either in writing or by telephone. It is well established by Awards of this Board that conducting an investigation **"in absentia"** does not in itself constitute deprivation of an **employee's** right to a fair and impartial hearing. See Awards 18395, 18129.

On December 23, 1981, claimant was notified by the Carrier's Trainmaster:

'This refers to investigation held in Absentia, at 8:00 A.M., Thursday, **December** 17, 1981, in the Conference Room, Barr Yard **Annex** Building, 733 West 136th Street, Riverdale, Illinois, for the purpose of determining the material facts **in connection** with your failure to handle Draft Gear Pat. #1914479, as reported on your Form **CJ-68**, in a manner that **would** prevent alleged personal injury to yourself at approximately 1:50 p.m., November 10, 1981, and failure to complete **CJ-68** as instructed by Manager Terminal Services W. E. **Whalin**.

It has been found you were at fault for failure to properly handle draft gears as previously instructed and at fault for not complying with instructions of Manager Terminal Services by not completing Form CJ-68.

The discipline administered is Dismissal from Service of the Company. Your record will be marked **accordingly."**

The Organization complains that one Carrier officer issued the letter of charge, another conducted the investigation, and a third officer rendered the decision. As neither the claimant nor his representative attended the investigation conducted on December 17, 1981, we think that the Organization is not on good grounds in complaining, after the decision was rendered, as to who preferred the charges, conducted the investigation or rendered the decision. Rather, we have been referred to no rule in **the** Agreement specifying who will prefer charges, conduct investigations, **or** render decision. See Awards 24275 and 23114 involving the same parties, as well as Awards 21559 and 21405,

There was evidence in the investigation that the Section **Stockman** had instructed claimant as to the proper manner of handling draft gears and placing them on the pallet; that on previous occasions when he attempted to instruct claimant, the claimant would "**explode**", get off the forklift and wander off to the caboose track. **In** its submission to the Board the Organization complains that there were no posted instructions as to the proper handling of draft gears. **Employees** are expected to comply with instructions, whether posted or verbal.

There was also direct testimony in the investigation that claimant refused, on more than one occasion, to complete the personal injury report when instructed to do so by his supervisors. See Award 8, of Public Law Board 543 wherein it was held:

"The accident reporting rule is of the utmost importance to the Carrier in the conduct of its operations, and any employee who does not **comply** with it does so at his **peril.**"

It was also brought out in the on-property handling that claimant had previously been dismissed from service and was reinstated on a leniency basis, and that following his reinstatement he was charged with disciplinary offenses on three occasions **and** was assessed a **30-day** overhead suspension as a result.

Based upon the record before us, there is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1983