

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24619
Docket Number CL-25013

Tedford E. Schoonover, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9726) that:

1. Company violated the Agreement between the Parties when it terminated **Clerk-Towerman** T. Rodgers from the service of the Company as a result of formal investigation for allegedly not protecting his assignment as Control Operator.

2. Company shall now reinstate **Clerk-Towerman** T. Rodgers to the service of the Company with pay for all time lost and all rights unimpaired.

OPINION OF BOARD: There are both procedural and substantive problems in this case. The procedural problem arises out of Carrier's letter of March 22, 1982, quoted as follows:

"Arrange to attend formal investigation to be held in the office of Trainmaster, 171st St. & Ashland Ave., Hazel Crest IL at 1:30 PM, Wednesday, March 24, 1982, to determine whether or not you properly protected your assignment as Control Operator at **Riverdale** Tower on Saturday, March 20, 1982; and whether or not you protected your assignment as Control Operator at Riverdale Tower on Sunday, March 21, 1982.

'You may bring witnesses and/or representative on your behalf as provided in your schedule agreement.*

The Carrier, realizing Mr. Rogers would not have time to receive the letter in time for the hearing on the 24th, notified him by telephone on March 23. Claimant was represented by Local Chairman of the Brotherhood of Railway, Airline and Steamship Clerks, L. J. Berardi, who participated in the investigation. The matter of the short notice was raised and Mr. Berardi referred to Rule 22 paragraph (b) of the labor agreement. The Claimant, Mr. Rogers, had already stated he was ready to proceed with the investigation. Carrier offered to postpone the investigation until Mr. Rogers received the letter but this offer was declined by the Brotherhood representative. Accordingly, the investigation was continued

to its conclusion and at the end Claimant stated he had no objections to the manner in which it had been conducted. In view of having accepted the telephone notice and proceeding with the investigation in this way Claimant is not now in a position to raise this procedural point. By agreeing that he was ready to proceed with the investigation his right to object on the matter of the notice was effectively waived. Moreover, there is no indication that either the Claimant or the Brotherhood was in any way handicapped in their presentations during the investigation due to the short notice. In the circumstances we do not find that Claimant's rights to due process were violated on the procedural issue.

It has been ruled in many cases on the Third Division that failure to progress objections during the hearing amounts to waiver. Examples follow:

Award 16074: Objections to the manner in which a hearing is being conducted, i.e., as to its fairness and impartiality, must be raised during the hearing. The failure to raise such objections constitutes a waiver. See Awards 15027, 14573, 14444, 15025, 15020.

Award 16172: As a general proposition procedural defects may be waived by the parties charged if timely objections are not raised.

Award 16678: This Board has held on any number of occasions that objections to the manner in which a hearing is being conducted must be raised during the hearing. The failure to raise such objection constitutes a waiver.

The substantive charge pertains to Claimant's failure to protect his assignment, on the 4:00 p.m. to midnight shift at Riverdale Tower. The circumstances of his actions on both March 20 and also March 21 have been carefully considered. On Saturday, March 20 he apparently relied on his car, but finding it would not start, called in that he could not get to work. On being told by the caller there was no relief he managed to get a ride and made it to work some 15 minutes late. While he could not be seriously faulted in that instance his actions on the following day -- Sunday, March 21 -- show gross lack of responsibility in meeting his obligation to report for duty at the designated time. His car would not start on Saturday. It would not turn over according to his testimony. On Sunday the same thing happened. It is a simple fact that if the car would not turn over on Saturday it certainly would not turn over on Sunday unless some action was taken to correct the problem. The evidence indicated Claimant did nothing to correct the problem and get it ready to use in getting to work on Sunday. Instead, he hoped to get a ride but when that did not work out he stated he would take the train. He made no effort to catch the 2:00 p.m. train which would have gotten him to work on time. Instead he planned to take the 4:00 p.m. train.

It is a plain fact that if he had been serious in meeting his obligation to get to work on time he would have taken the earlier train. Certainly he was going to be late in taking the Later train which did not Leave Hazel Crest, his home station, until he was due on the job at Riverdale Tower some 5 miles away. But to compound the problem, he missed the 4:00 p.m. train, and made no further effort to protect his assignment. Asked why he did not take a taxi he replied, it was too expensive. True, taxis are expensive but when matched against Claimant's obligation under Operating Rules H and P, it is most assuredly a practicable alternative. The Rules are as follows:

Rule H: "Dishonesty, desertion from duty, insubordination, willful neglect, gross carelessness, making false reports ~~or~~ statements, concealing facts concerning matters under investigation, immoral character or serious violations of the law, are prohibited."

Rule P: "Employees must not engage in other business, absent themselves from duty, engage a substitute to perform their duties, of exchange duties with others without authority.

Employees must report for duty at the designated time and place and those subject to call must not leave their usual calling place without leaving information as to where they can be located.

Employees must give immediate notice of change of residence or telephone number to trainmaster and crew caller."

In summary, the evidence is clear and convincing that Claimant was neglectful and careless of his responsibility to report for duty on time in violation of the operating rules cited above. Nor was this his first offense. In his service of some 7 years he had been reprimanded and dismissed on prior occasions but had been reinstated following appeals by the Brotherhood. And significantly, his most recent dismissal occurred in September 1981 for violation of the same Rule P quoted above. He was reinstated from that disciplinary action on January 6, 1982, and now, less than three months later, he is again found in violation of the same rule.

The evidence demonstrates Claimant had a fair and impartial hearing and that his dismissal from service was just and reasonable.

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 **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:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.

