

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24817
Docket Number CL-24662

George V. Boyle, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Texas and Mexican Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9641)
that:

1. Carrier violated the Agreement between the parties when it arbitrarily and injudiciously suspended Clerk Rey Ramos from its service beginning September 2, 1981, without justification.

2. Carrier's action in suspending Clerk Ramos from service was unjust, arbitrary and an abuse of discretion.

3. Carrier shall now be required to expunge the record of investigation from Clerk Ramos' personal record file and compensate him for ten (10) days' wages lost account Carrier's action.

OPINION OF BOARD: The Claimant, a Telegraphic Clerk of thirteen years service, was assigned the responsibility for sending telex messages regarding cars held at the Corpus Christi, Texas yards due to insufficient waybill information on hand. These messages were to be transmitted each day before 3:00 P.M. to Laredo, Texas. On August 14, 1981 this information was not transmitted. Subsequently, the claimant was notified: "Report to the Trainmaster's Office, Corpus Christi, Texas at 2:00 P.M., Friday, August 21, 1981, for formal investigation to develop the facts and place your responsibility, if any, in connection with a report that you may have violated Rule 801 of the General Rules and Regulations of the Texas Mexican Railway Company when you failed to send a list of all cars received from connections without sufficient waybill information to meet requirement of Tex Mex Permit Embargo to Agent at Laredo, Texas, by Telex on Friday, August 14, 1984."

Rule 801 reads in part:

"Indifference in the performance of duties will not be condoned. Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or who conduct themselves in a manner which would subject the railroad to criticism.

Any act of ... negligence affecting the interest of the Company is sufficient cause for dismissal ..."

After a hearing the Claimant was suspended for ten (10) days for his "serious violation of Rule 801."

The Organization, on behalf of the Claimant, alleges that: 1) He did not receive a fair and impartial hearing, as required by the contract, since "Carrier's letter of August 17, 1981 to Mr. Ramos fell far, far short of stating in full the 'precise charge(s)' being placed against him as required and mandated by Rule 25(a)." 2) The "Carrier discipline rendered was not supported by the record surrounding the case." It is their contention that the waybill information had been handled by telephone instead of Telex for a considerable length of time and that this practice was well known, condoned by the Carrier's officials and therefore the Claimant was not culpable.

The Board must disagree on both counts.

There is nothing remarkable about the Carrier's notification. The Employee's Organization contests the precision of the charges but there should be no question in the Claimant's mind nor in the minds of his representatives concerning the incident investigation. Rule 801 similarly is clearly applicable and relevant. At no time did either the Claimant or his representatives indicate in handling this matter on the property that they lacked clarity regarding the infraction or the alleged rule violation.

The record clearly shows that the failure to obtain information on cars without waybill information had been a matter of great concern to the Carrier and that steps had been taken to insure that all employees would use the telex in transmitting this essential information and recording it. The Assistant General Manager had circulated a letter to that effect and the Claimant acknowledged his responsibility to do so.

Three months before this incident the President and General Manager called the clerical employees attention to the seriousness of continued dereliction in this regard. He required a notice to that effect to be posted for three (3) weeks adding "This situation will be corrected. Please be governed accordingly." Thus the Claimant was on notice and warned.

The fact that he and others continued to handle this information by phone does not mitigate the offense. He admitted he did not send the Telex information as he had been directed and admonished to do. Under questioning by Mr. Perez the Claimant said:

"A -- Mr. Spear wanted to know why a list of cars on hand at Corpus Christi with insufficient waybill information had not been sent to Laredo Friday, August 14th.

Q -- And what was your answer?

A -- My duties on Friday, August 14, were changed. I had to familiarize myself with different duties and therefore, I did not send the telex." Transcript p. 5.

Thus, based upon the record, the Claimant had not obeyed instructions in this matter and had violated Rule 801 and the Carrier's action was justified.

This is a serious matter and the Board finds no basis for disturbing the Carrier's decision. The claim is denied.

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 16th day of May, 1984