

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24963
Docket Number CL-24608

Tedford E. Schoonover, Referee

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

PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9590)
that:

1. Carrier violated the terms of the parties' Agreement which became effective May 15, 1972, particularly Rule 21, when it dismissed from service Mr. Thomas H. Outlaw, Extra Board Clerk, account investigation which was held on September 11, 1980, and

2. Carrier shall be required to reinstate Mr. Thomas H. Outlaw with all rights unimpaired, and compensate him for all wage and benefit losses sustained commencing September 17, 1980, the date dismissed, up to the time the violation is corrected.

OPINION OF BOARD: The disciplinary provision of the labor agreement are included in Rule 21(a). Portions of the Rule relevant to this dispute, are as follows:

"RULE NO. 21 - DISCIPLINE AND INVESTIGATIONS

(a) An employe who has been in the service sixty calendar days or more or whose application has been formally approved shall not be disciplined or dismissed without a fair and impartial investigation, and prior thereto will be notified in writing of the precise charge. At the investigation the employe, if he desires to be represented, may be accompanied and represented by the 'duly accredited representative' as that term is defined in this agreement. He may, however be held out of service pending such investigation in which event he shall be immediately apprised in writing of the precise charge against him. The investigation shall be held within seven calendar days of the alleged offense or within seven calendar days of the date information concerning the alleged offense has reached his supervising officer. In cases where discipline is administered, a decision in writing, with copy to the duly accredited representative, will be rendered within seven calendar days after the completion of investigation. Investigations shall be held whenever practicable, at point of employment of the employe involved and at such time as not to cause the employe to lose rest or time. Employe shall have reasonable opportunity to secure the presence of representatives and/or necessary witnesses. Forty-eight hours will, under ordinary circumstances, be considered reasonable time."

A meeting at 8:30 AM on September 6, 1980, was set by M. Wittenborn, Assistant Agent, Proviso to inquire into a conversation earlier that day between Claimant and Chief Clerk Brum in which he was allegedly abusive and quarrelsome. Also in attendance at the meeting was M. Schuh, Data Processing Manager. During the meeting, Claimant was described as quarrelsome and abusive and unwilling to answer questions raised by the carrier officials. The meeting resulted in Claimant being removed from service and escorted from the property. Under a notice signed by Mr. Schuh, as follows:

"...you are removed from the service of the Chicago and North Western Railway Company this date, pending investigation account your failure to comply with a direct order to remain in the Agent's office at Proviso at 8:40 AM Sept. 6."

Mr. Outlaw was instructed by letter to appear for investigation on September 11, 1980, to inquire into the following charges:

"Your responsibility in connection with your failure to comply with Rules 7 and 10 of the General Regulations and Safety Rules which read in part as follows:

'Rule 7. Employees are prohibited from being careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious...'

'Rule 10. Courteous, orderly conduct is required of all employees. Boisterous, profane or vulgar language is prohibited.'; specifically, (1) your failure to comply with direct order to remain in the Agent's Office at Proviso at 8:40 A.M. September 6, 1980 issued by Mr. A. J. Schuh, Data Processing Manager and (2) your being quarrelsome and abusive to Mr. A. Schuh and Mr. M. Wittenborn, Assistant Agent, and your refusal to answer their direct questions regarding your activities on that date, while you were employed on Position 683, Messenger, commencing 6:30 A.M. September 6, 1980."

At the hearing, Claimant was represented by F. J. Fese, Division Chairman, of BRAC and also R. Iaccino, BRAC Committeeman. Both Union officers participated in the questioning of witnesses. The hearing was conducted by W. G. Stewart, Industry Coordinator, representing the Carrier. The hearing continued from 8:37 AM until 11:37 AM, a period of three hours and the transcript covered 46 pages of single spaced typing.

Claimant was notified of his dismissal from service on September 17. The dismissal was appealed in the usual manner as provided in the labor agreement.

An important element in the case is the contention that statements of Messrs. Wittenborn and Schuh were the result of collusion. This contention is not borne out by the record. Following the interview of September 6, with Claimant each presented his own separate account of what had transpired. Although each was given an opportunity later to review the other's report, each statement remained as originally drafted and was not changed. Testimony bearing out these facts given during the hearing of September 11 was not refuted. BRAC's contentions to the contrary are conjecture without any supporting evidence.

The Organization also contended that the investigation hearing was biased because Carrier declined to call Ms. Brum as a witness. Carrier representatives explained she was not needed as a witness since the charge against claimant was not based on his dispute with her but rather his alleged insubordinate conduct during questioning by Messrs. Wittenborn and Schuh. Since she was not present at their meeting with the claimant it is clear she would not have been an informed witness as to what transpired. If Organization representatives felt she was needed as a witness they were free to call her. Rule 21(a) specifically provides employees the right to call necessary witnesses.

In dismissing Mr. Outlaw and denying appeals on his behalf Carrier characterized his alleged abusive and quarrelsome conduct as insubordination. Apparently, no consideration was given to other aspects of the September 6 conference which are included as a part of Claimant's defense and evidently contributed to behavior which Messrs. Wittenborn and Schuh found so offensive.

In the first place, Claimant was not acquainted with Mr. Schuh and felt intimidated and fearful of his demeanor and aggressive actions. While we do not condone, in any way, Claimant's insolence, his refusal to answer questions or rude behavior, we are persuaded that much of his improper behavior resulted from the way the interview was conducted. Thus, we note he was called into a meeting with his superiors over an incident he had been led to believe, by Asst. Agent Sheahan, was over and resolved satisfactorily. Rather than intentional insubordination his conduct may more properly be described as fearful of being on the spot and perplexed as to the purpose of the conference. These conclusions are supported by details of Claimant's testimony during the hearing investigation and were not refuted on the record.

Claimant's description of his reactions to the conference and the treatment he received are as follows:

"I must exclude Mr. Wittenborn from, from the bulk of the proceedings, as I say, he only asked one question and the remainder of the time, excluded himself, I would say, he only asked one question I would say from what occurred next. I felt, I did not feel to be threatened or endangered by Mr. Wittenborn, however, I most certainly felt to be in physical danger from the head of the IBM Department, his demeanor, the movement of his body and his voice indicated to me I was in physical danger in his presence. Later, I felt more than mere physical danger when the threat of physical restraint by Agents was placed upon me on more than one occasion. I had no idea what would occur to me. I believed my safety and my health, and perhaps my life were in danger at this time."

During the Conference an attempt by Claimant to use the telephone was grabbed away and he was told that when on Company property he was subject to such treatment as Company officials chose. Apparently it was plainly indicated during the conference that he was being taken out of service. The only reason Mr. Schuh did not complete the action immediately was inability to find the proper form readily. The Claimant, understanding he was being taken out of service, left the office and went to the parking lot where he removed his personal articles from the company vehicle and placed them in his own car. He explained during the hearing investigation that since he would not be using the company car anymore he wanted his personal belongings in their proper place.

It was Mr. Outlaw's leaving the office that Mr. Schuh perceived as Claimant's greatest offense for this was the action referred to on the form removing Claimant from service. Mr. Schuh also ordered Company Police brought in and directed Assistant Agent Meder to go get Mr. Outlaw and have him return to the office. His only purpose in having Claimant return was to hand him the formal notice removing him from service.

In the circumstances, neither the Claimant nor his chief interviewer conducted themselves as models to be imitated. On balance, the Board finds there was overreaction on both sides. While Carrier officials have every right to expect informative replies to proper inquiries free from quarrelsome or abusive language they also have an obligation to treat employees civilly, manifest patience and mature understanding. In this connection we are moved to observe that while the Claimant was a mere young man with barely six months service his interviewers were seasoned officials.

The Board concludes that the extent of Claimant's insubordination does not support the dismissal action. His conduct merits disciplinary action, to be sure, but dismissal is excessive on the basis of the evidence reviewed herein. The Board finds that a fair and just settlement of this dispute is to set aside the dismissal action and restore Claimant to service; his period out of service to be considered as a disciplinary suspension without pay for time lost.

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 Employee 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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

RECEIVED
AUG 14 1984
CHICAGO, ILL.

Dated at Chicago, Illinois, this 14th day of August 1984.