

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25650  
Docket Number SG-25974

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis-Southwestern Railway company:

Claim account of Carrier violated Rule 700 of the Schedule Agreement, as amended, when it dismissed Signalman C. L. Booth for allegedly operating a company vehicle while intoxicated and being involved in an accident resulting in his arrest. (Carrier file 91-73)

OPINION OF BOARD: This dispute turns on an issue which the parties have sharpened to: Was Carrier possessed of sufficient knowledge of Claimant's offenses for which he was convicted and served jail time, at a point within the allowable 20 days prior to Carrier's disciplinary charges made against him, or at some earlier point months before and clearly exceeding the time limit?

The time limit consideration originates in Rule 700(a) that Carrier is being alleged of violating, reading:

"...Charges will be made in writing within twenty (20) calendar days of knowledge of an offense...."

Carrier contends that its official, Signal Supervisor Marrs, tho' admittedly aware was nevertheless not aware of the full seriousness of the offenses at the time of Claimant's conviction and that, only months later, it was an investigator's official report made independently of Signal Supervisor Marrs (hereinafter, Supervisor) which imparted requisite knowledge to Carrier, prior to notification of the discipline charges made to Claimant on March 2, 1984. At the subsequent hearing on the charges, there were seven, including the Supervisor and members of his Signal Gang No. 1, who gave testimony. Claimant's assignment was in Gang No. 1 as Signalman and he was one of the group so testifying.

The seven who testified came across as fairly consistent in all common areas in which they testified, all except for the Supervisor's account which was inconsistent with and contrary to points made in the mass of the rest of the testimony.

The Transcript of the hearing proceedings, in general view, brings out that Claimant, while driving a Carrier truck in company with one passenger, a fellow employee, was arrested, fined, and jailed under a sentence imposed, for his **conviction** on drunken driving and a hit and run accident, to both offenses of which Claimant pleaded guilty. Four witnesses testified they had heard the supervisor discuss details of the event **or** they had personally reported or discussed the details with the Supervisor, all in the period of June-July, 1983. News of the event appeared shortly in print in a newspaper account brought to the Signal Supervisor's office and passed around the Department and, anyway, the event had become a matter of general knowledge among the Signal Department **employees**.

The Transcript bears distinct testimony at several points that the Supervisor knew that a Carrier vehicle was involved, that the hit-and-run caused damage, and that the Carrier vehicle received some slight but visible damage in the accident. There was substance at hand for a substantiated vehicle accident report due Carrier.

As to departmental procedure to follow in that particular regard, the Supervisor made the point to members of his Gang 1 that he would report the instance, which he discounted at the time as a "drunk and **disorderly**" instance, no more.

In actuality, the sole report ever to emerge was the investigator's as above mentioned, and he (Robinson) lamented that the factual investigation and report instituted after lapse of the seven ensuing months were difficult to make and evaluate. The Transcript records at page 8:

'Robinson - Due to the nature of the investigation and its severity **in** which I also felt that the supervisor was **complecent** (sic) in covering up this accident, I was attempting to obtain all facts available before submitting my investigation. I certainly feel that with all justice to Mr. Booth (Claimant) that it would have been **perfrential** (sic) to do the investigation this way. I felt that Mr. Booth deserved every benefit of the doubt and for this reason I delayed submitting any report until all information could be obtained. (sic) and evaluated."

The accumulation of circumstances leaves the Supervisor chargeable here either with actual knowledge **or** with reasonably imputed knowledge of the full **seriousness** of the matter sometime in June-July, 1983. So exposed to evident facts the Supervisor's assessment thereof, tinged with some arbitrariness or possible other bent, was in any case unreasonable.

And in the outcome of the eventual hearing held March 30, 1984, for Carrier to accept the testimony of its Supervisor as controlling was arbitrary in view of the gist of an overwhelming mass of testimony heard. Carrier's\* position that it made timely charges against Claimant is **not** well taken.

The time limit intention of Discipline and Investigations Rule 700 is, in fairness and impartiality to all, to expedite the orderly handling by Carrier of its disciplinary proceedings. We agree with the Organization that Rule 700 was violated, the resulting months-long delay, and confusion it caused, creating investigation difficulties, hardships, and uncertainties for both parties.

Therefore. Carrier having violated the Agreement, the claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1985,