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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25999
Docket Number SG-25453

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company that:

(a) Carrier violated current Signalmen's Agreement in particular Rule 53 when on or about October 11, 1982 they issued discipline Notice #267 and also issued discipline Notice #92-A to R. W. Annear, Signal Mtnr. at Clinton, Iowa.

(b) Carrier now be required to re-instate R. W. Annear to his rightful position with the carrier, clear his record of wrongful discipline and compensate him for all lost wages. [General Chairman file: CNW-G-AV-11. Carrier file: 7-83-3-D]"

OPINION OF BOARD: On September 16, 1982, Claimant R. W. Annear, a Signal Maintainer, was sent a Notice to appear for formal Investigation by Signal Supervisor A. H. Freund. The document contained the following:

"CHARGE: Your responsibility to properly maintain switch fouling circuit at switch 31, 'high switch lead' at Clinton, Iowa that caused false proceed signal on September 14, 1982."

After postponement requested by the Organization the Investigation was conducted on October 6, 1982, by Craig Donski, Assistant Division Manager, Engineering. On October 11, 1982, Assistant Vice President and District Manager Otter issued a Discipline Notice informing Claimant of a 60 day suspension.

The Organization contends Otter is not Claimant's Supervisor within the meaning of Rule 53 and therefore his action violates the Rule. The Organization maintains only the Signal Supervisor can impose discipline under Rule 53 and in support cites Third Division Awards Nos. 21230 and 22227.

The Carrier argues those Awards arose under Rule 60 of the Agreement between the parties which had been effective prior to January 1, 1982. The Rule reads:

"An employe who has been in service more than thirty days will not be disciplined or dismissed without investigation, at which investigation he may be assisted by an officer of the Brotherhood of Railroad Signalmen of America, or by a fellow Signal Department employe of his choice. Such investigation will be conducted by a supervising officer of the Signal Department. Prior to the investigation he will be notified as to the nature thereof or charges against him, if any. He may, however, be held out of service pending such investigation. The investigation will be held within seven days from date of alleged offense or after information of the alleged offense has reached the supervisor, except that where an employe is held out of service pending investigation same will be held within three working days from date taken out of service. The employe will be advised of supervisor's decision, in writing, within seven days after completion of investigation, with copy to local chairman."

Subsequent to the Awards cited the parties negotiated a change in Rule 60. The Carrier contends that was done "to delete the requirement that the investigation be held by an officer of the Signal Department" and argues that "In doing so, the requirement that the discipline be assessed by an officer of the Signal Department was also removed." The present Rule (which is now Rule 53) is virtually identical to former Rule 60 except that the sentence "Such investigation will be conducted by a supervising officer of the Signal Department" is not contained in Rule 53. Under the present Rule, according to the Carrier the discipline may be imposed by any Supervisor.

We turn first to Third Division Award 21230. In that case the Investigation was conducted by an Assistant Division Manager-Engineering whom this Board found was not a "supervising officer of the Signal Department." The Carrier had maintained the Signal Department was part of the Engineering Department as a result of a reorganization. This Board sustained the claim noting "If Carrier's administrative reorganization made the rule language in question difficult or impractical to apply, it had an obligation to so inform Petitioner and endeavor to negotiate an appropriate revision." The Award does not reveal who advised the employe of the decision.

In Third Division Award 22227 the Investigation was conducted by two persons found by this Board to be supervising Officers of the Signal Department. Claimant was advised of the penalty assessed by a Division Manager who this Board found was not a supervising Officer of the Signal Department. We held:

"But the second argument made by the Claimant deserves closer consideration. The first paragraph of Rule 60 charges the Carrier to conduct a disciplinary investigation 'by a supervising officer of the Signal Department', and, as noted above, it is the 'supervisor's decision, in writing' that must be delivered to the charged employee. The evidence is that a letter setting forth the decision was signed, not by either of the interrogating officers, but by another management official, who was not a supervising officer of the Signal Department.

* * *

The parties to the contract specified that the investigation and decision must be made by a Signal Department official. This Board perceives said requirement to be more than a technicality, but instead something that can be of substantial value to a charged employee. There is benefit to the employee in having an official who has expertise in the field under investigation making the disciplinary decision. In any event, the contract mandates that such an official shall make the decision."

Thus, our holding in Third Division Award 22227 was predicated upon the fact that we viewed the latter portion of the Rule, regarding the source of the notification of decision, as relating back to the earlier requirement regarding who must conduct the investigation. That we think was a logical interpretation of the Rule. But the matter is different now. To whom does that portion of Rule 53 refer when it speaks of the "supervisors decision?" The Organization contends the last sentence of the Rule had been interpreted in Third Division Award 22227 and the Carrier sought no change in its wording, only requesting a change in the requirement that investigation be conducted by a Supervising Officer of the Department.

This Board believes Third Division Award 22227 is of little precedential value in this dispute due to the significant difference in the language of the Rules. Contrary to the Organization we do not believe the failure to change the portion at issue is conclusive when, in fact, that upon which it depended, and to which it had been interpreted as referring, has been negotiated out of the Rule.

The Rule with which we are confronted contains one prior reference to the term "Supervisor." That is the portion which requires a Hearing be held within a specific time of the Supervisor's learning of the alleged offense. The second reference, the one at issue here, also deals with the question of time limitations. We thus conclude Rule 53 by its terms does no more than state time constraints. It imposes no requirements as to the identity of the deciding Supervisor.

The Organization also contends the Notice given Claimant was not sufficiently precise in that it cited no specific date, time or rule. We believe the Notice, quoted above, was sufficiently specific to inform Claimant as to the allegations against him. Further we see no lack of procedural fairness by virtue of the Charging Officer having been a witness or in the fact that in other cases others may have been charged.

We conclude there was substantial evidence adduced at the Hearing to support the Carrier's findings.

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. Bever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1986.

