NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26439
THIRD DIVISION Docket Number X-26561

Elliott H. Goldstein, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

On behalf of L. E. Thompson for all time lost account of being removed from service in violation of Rule 6-A-l of the current Agreement.

Carrier file SD-2175."

OPINION OF BOARD: Claimant a Signalman/Maintainer, was removed from service on September 10, 1984, pending a" investigation in connection with a derailment which occurred on September 8, 1984. Following a formal Hearing on October 3, 1984, Claimant was dismissed from service.

The instant Claim is based upon the Organization's contention that the Carrier's handling of this matter was procedurally defective in that this was not a proper case for suspension pending a hearing. At issue is the application of Rule 6-A-l of the controlling Agreement, which states as follows:

> "6-A-1. (a) Except as provided in Rules 1-A-l and 6-A-4, a" employe shall not be reprimanded, suspended "or dismissed from service without a fair and impartial trial "or will a" unfavorable notation be placed in their personal service record without written notice to the employe, with copy to the Local Chairman.
>
> (b) A" employe shall not be held out of service pending trial and decision unless he is suspected of committing a major offense and his retention in service could be detrimental to himself, another person or the Company."

It is the Organization's position that, pursuant to the foregoing Rule, Carrier must meet two conditions before a" employe can be removed from service pending investigation: (1) the employe must be suspected of having committed a major offense; and (2) it must be show" that his retention in service could be detrimental. Though the Organization acknowledges that Carrier could reasonably have suspected that Claimant allegedly committed a major offense, there was no evidence presented that his retention in service would have been harmful to himself, another person, or the Carrier. Lacking this evidence, Carrier failed to establish that both required conditions of Rule 6-A-l (b) had been met, the Organization asserts.

Carrier contends that its managerial prerogative in determining what constitutes a major offense, and its right to withhold employes suspected of committing such offenses, has long bee" held by the Board. In this case, the Claimant was properly withheld from service and no violation of Rule 6-A-l has occurred, Carrier stresses, and the Organization's unsupported allegations to the contrary do not constitute a basis for sustaining this Claim.

This Board has reviewed all the evidence and supporting documents in this case, and it finds that the Carrier had substantial reason to withhold the Claimant from service pending a hearing. Rule 6-A-l(b) specifically allows the Carrier to withhold an employe from service when a major offense has been committed. We do not find it unreasonable that Carrier determined that Claimant's alleged involvement in the September 8, 1984, derailment constituted a major offense. By the same token, given the nature of the incident, the possible reoccurrence of similar or more drastic consequences was an obvious detriment and threat to the safety and well-being of not only the Claimant, but other employes and the public as well. We will not substitute our judgment for the Carrier's when the record indicates that it reasonably exercised its managerial discretion in removing Claimant from service under Rule 6-A-l.

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 Employes involved in this dispute are respectively Carrier and Employes 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 24th day of August 1987.