

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27476
Docket No. MW-26701
88-3-85-3-451

The Third Division consisted of the regular members and in addition Referee Elloit H. Goldstein when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The discipline imposed upon Steel Erection Foreman K. A. Collins and B&B Foreman E. D. Randle for 'alleged violation of General Notice, General Rule "B", General Regulation 700, 702, 702(B) and 702(C) of Safety Policy, General Rules, General Regulations, Safety Instructions and Radio Rules - Form 7908' was arbitrary, capricious and on the basis of unproven charges (System File D-5/013-210-C&R).

(2) The Claimants' records shall be cleared of the charges leveled against them and they shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants in the instant case are Steel Erection Foreman K. A. Collins and B&B Foreman E. D. Randle, both of whom were employed by Carrier in its Maintenance of Way Department in a Supervisory capacity in June, 1984.

On June 14, 1984, at approximately 10:00 a.m., Claimants allegedly arranged for welding work to be performed on a privately-owned vehicle during assigned working hours, using Carrier material and equipment. Following this alleged incident, Claimants were notified to attend an Investigation on June 28, 1984. Both Claimants were dismissed from service following the Hearing.

Both Claimants appealed the Hearing Officer's ruling. After considerable correspondence and meetings between the parties, it was agreed on February 26, 1985, that Claimants would be reinstated on a leniency basis, effective March 4, 1985, without pay for time lost and without prejudice to the parties' respective positions in this matter. The Organization now claims that Claimants should be compensated for the wage loss incurred and their records cleared of the charges leveled against them. Carrier argues that Claimants' dismissal should be upheld.

Before turning to the merits, we must dispose briefly of several procedural issues raised by the Organization in its September 21, 1984, Notice of Appeal. Therein, the Organization contended that the Carrier failed to furnish Claimants a copy of the charges proffered against them prior to Hearing, and, in addition, that Claimants were denied a fair and impartial Hearing because the transcripts of their personal records were entered into the Hearing record.

With regard to the Organization's first objection, we find from our review of the record that a copy of the notice of the charges was timely furnished to both Claimants and to the Organization. At Hearing, both Claimants indicated they were fully aware of the charges against them, and the Organization was present to represent them. We conclude, therefore, that the Organization's contention of lack of notice is unfounded.

The Organization's second procedural argument is also without basis. It is well established that an employee's transcript of past record may be entered as evidence in an Investigation, not to determine guilt or innocence on the charges against him, but for consideration in determining the degree of punishment in the event a finding of guilty is made. Awards following this principle can be found from every Division of the National Railroad Adjustment Board. See, Third Division Awards 12492, 13684, 15184, 16678, 18362.

Accordingly, the Board finds no basis upon which the Claim should be dismissed for procedural reasons.

Turning to the merits, we note from review of the record and evidence adduced in its entirety that this case presents the classic credibility conflict which the Board is precluded from considering. It is simply not the function of this Board to resolve disputes arising from testimony given by witnesses at the Investigation. Those determinations are left to the Hearing Officer. In this case, the Carrier could reasonably decide to attach more weight to Supervisor Peter's testimony as opposed to Claimants' self-serving statements. To accept Claimants' version of the incident would require rejection of Peters' testimony. However, we find no basis or motive for the Supervisor to testify untruthfully. To the contrary, it is the Claimants' testimony which appears to be evasive, contradictory and generally lacking in credibility.

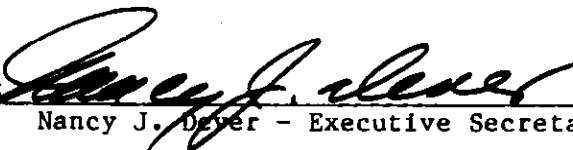
We conclude, therefore, that evidence of record in this case substantially supports the Carrier's position. The remaining question is the measure of discipline to be assessed. Both Claimants are long-term employees with good work records who have essentially made their employment with Carrier their life's work. We are of the view that by keeping Claimants out of service in excess of forty days without pay, the Carrier made them mindful of their obligations and duties. Accordingly, we accept the terms of the reinstatement Agreement dated February 26, 1985, which provided that Claimants be restored to employment, with seniority and other benefits unimpaired, but without back pay for the period that Claimants were removed from Carrier's service. Since the Claim requests that the Claimants' record be cleared of the charges found to be meritorious, and for full back pay, it is denied.

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 22nd day of September 1988.