

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(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-10064) that:

1. Carrier violated Rule 21 of the Agreement when it disciplined Mr. P. Bogner with a sixty (60) day suspension following an investigation held on October 22, 1984, as a result of charges placed against him on October 17, 1984, and

2. Carrier shall now be required to compensate Mr. Bogner for all time lost during the sixty (60) day suspension commencing on October 24, 1984, as provided in Rule 20 of the Agreement, and remove all references of the charges and investigation from his service record."

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.

Subsequent to an investigation, the Claimant was found guilty of the following charge:

"Your responsibility in connection with your failure to properly perform your duties. Specifically your incomplete and illegible check of Job 72 that arrived at approximately 2325 on October 16, 1984 while you were assigned to Position 110, Yard Clerk, commencing at 1559 hours on that date."

He was then suspended for sixty (60) days.

The Board has carefully reviewed the record submitted by both parties and finds it somewhat incomplete. The Carrier, in its submission to the Board, included the transcript of the hearing held on this matter, and the Organization included the correspondence exchanged on the property. However, the parties are reminded that Circular No. 1 of this Board states:

"The parties are, however, charged with the duty and responsibility of including in their original written submission all known relevant, argumentative facts and documentary evidence."

With respect to the hearing, the Board, while noting that the Organization's observations regarding the conduct of the hearing are not unreasonable, concludes that the matter should not be set aside on procedural and due process contentions.

Turning to the merits, we find sufficient evidence to support the Carrier's determination of guilt to the charges. However, as best we can ascertain from our reading of the record that we may properly consider, the Claimant's transgression had no effect on the Carrier's mission, apparently whatever happened did not slow down service and there was no showing of any damage.

Moreover, with respect to the Claimant's prior record, while the Board recognizes that, when an employee's past record is introduced into the record, this may rightfully be a source of contention and argument, in the case before us, this was not done until the Carrier filed its submission to the Board. Accordingly, on the record that is properly before us, the penalty of a sixty (60) day suspension is unduly harsh and it will be reduced to a ten (10) day suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Weaver - Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1989.