

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27728
Docket No. CL-28304
89-3-88-3-75

The Third Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10240) that:

(a) Carrier violated the Agreement at Topeka, Kansas by improperly removing Kenneth G. Etzel from its service on April 2, 1987, and

(b) Kenneth G. Etzel shall now be restored to Carrier's service with all rights unimpaired and with pay for all time lost beginning April 3, 1987, forward."

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.

Prior to the occurrence giving rise to the dispute herein, Claimant, with a seniority date of October 5, 1955, was the regularly assigned occupant of Lead Accounts Receiving Clerk position, Topeka, Kansas.

The record shows that on February 14, 1987, Claimant, while a patient at Topeka Memorial Hospital, was served with two letters written by Carrier's Manager-Disbursement Accounting. One letter dated February 13, 1987, informed Claimant that he was being withheld from service effective immediately, and the second letter instructed him to report for a formal investigation to be held on March 3, 1987, concerning the possible violation of Rules 2, 6, 13, 14 and 15 of Form 2626 Standard, Carrier's General Rules for the Guidance of Employes, in connection with Claimant's actions in failing to protect his assignment on Friday, February 13, 1987.

At the request of the Division Chairman of the Petitioning Organization, the investigation was postponed to April 2, 1987.

The investigation was conducted on April 2, 1987. Claimant was not present. The Division Chairman of the Organization was present at the beginning of the investigation, but was not permitted to be present during the investigation or to participate in the investigation as a representative of Claimant, the conducting officer ruling that the Division Chairman had to have verbal or written authority from the Claimant personally to represent him in the investigation. The ruling of the conducting officer was objected to by the Division Chairman. Following the investigation, Claimant was notified of his dismissal from service on April 7, 1987.

Rule 24(a) of the applicable Agreement provides in part:

"At such investigation the employe may be assisted by his duly accredited representative or one or more other employes of his craft, only one of whom shall be permitted to interrogate witnesses."

We interpret the term "duly accredited representative" as used in Rule 24(a) to mean the accredited representative of the collective bargaining unit representing the craft on Carrier's property (Second Division Award 11124). The Board has also held that an employee's right to representation in on-property disciplinary hearings arises only from the provisions of the collective bargaining Agreement. (See Third Division Awards 24998, 24999, 25000 and Second Division Award 11124.)

Under the provisions of Rule 24(a) of the applicable Agreement, the Division Chairman of the Organization had a right to be present at and to participate in the investigation of April 2, 1987, without further verbal or written authority from the Claimant. The record shows in correspondence with the Claimant prior to the investigation, the Division Chairman was recognized as Claimant's "representative."

The Board finds that the investigation of April 2, 1987, was not conducted in accordance with the provisions of the applicable Agreement. Any discipline resulting from such investigation cannot be upheld. In this connection, see Third Division Award 23120 involving the same parties.

We will sustain the claim to the extent that Claimant be restored to service with seniority and other rights unimpaired, and that he be compensated for time lost from April 7, 1987, to the date restored to service on the basis of the average number of days worked per month for the one-year period preceding his dismissal from the service. The compensation portion of the Award is arrived at on the basis stated because of Claimant's absentee record.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.