

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 27764  
Docket No. CL-27470  
89-3-86-3-780

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
PARTIES TO DISPUTE: (  
(Chicago Union Station Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10134) that:

1. Carrier violated the effective Telegrapher Agreement when it suspended Leverman K. E. Bauer from service for a period of fifteen (15) working days commencing March 10, 1986.

2. Carrier shall now compensate Mr. Bauer for all time lost as a result of this suspension and shall clear his record of the charges placed against him."

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.

On February 11, 1986, the Claimant was advised to attend an investigation to determine facts and place responsibility, if any, in connection with his alleged violation of Rules 706, 108 and 701 of the Rules of the Operating Department. The notice of investigation specifically alleged that the Claimant had failed to submit a written report regarding the improper routing of a Burlington Northern Suburban Train on January 21, 1986, as requested by the Stationmaster. The notice also stated that the Claimant allegedly failed to report to this Stationmaster's office, as he had been requested to do, on January 27, 1986, and that he failed to do the same thing on January 28, 1986. The notice of investigation was signed by this same Stationmaster. After the investigation was held on February 18, 1986, the Claimant was advised by

letter dated February 26, 1986, that he was guilty as charged and was "assessed a suspension of fifteen (15) working days without pay." This notice of discipline was signed by the same Stationmaster. On March 3, 1986, the Organization appealed the discipline to the officer of the Carrier issuing it. On March 20, 1986, the same Stationmaster answered this appeal. Therein he stated, in pertinent part, the following:

"This is to advise you that the discipline assessed as a result of the investigation held February 18, 1986 will remain unchanged since there was no testimony presented at the hearing that would warrant (changing) the discipline."

On April 4, 1986, the Organization's General Chairman wrote an appeal letter to the Carrier's Regional Manager of Labor Relations. In that appeal the Organization contended that there was a procedural defect in the manner in which the Claim had been handled by the Carrier. It requested that the Claim be sustained on those grounds.

Rule 27 of the Agreement reads as follows:

"RULE 27

DISCIPLINE AND INVESTIGATION

Employees will not be suspended or dismissed from the service without a fair and impartial trial; neither will they be held off duty for minor offenses pending investigation or decision. Prior to the investigation the employee will be advised of the charge against him, and will be allowed a reasonable time for the purpose of having witnesses and/or representatives of his choice present at the investigation. Witnesses will be examined separately, but in the event of conflicting testimony those whose testimony conflicts will be examined together. Employees will be notified in writing ten (10) days prior to date suspension takes effect. If charges against the employee are not sustained at the hearing, he shall be returned to his former position and paid for all time lost."

Since the same Carrier officer issued the complaint, judged the Claimant, denied the first appeal and, as the record shows, testified against the Claimant at the investigation, the Board must conclude that the due process requirements found in Rule 27, cited above, under the title of "fair and

impartial trial," were not met. Arbitral precedent in this industry has held that it is not improper for the same officer of the Carrier to serve notice of discipline, conduct the trial and then issue discipline. In the instant case, however, the multiplicity of roles played by the officer went considerably beyond that when he became primary source of evidence for the decision he himself issued against the Claimant. This procedural defect was compounded when this officer served as first level of appeal. Third Division Award 24476 has stated the following which the Board here cites with favor:

"We do look askance, ---- when the same hearing officer ---- serves as a witness since this very action pointedly destroys the credibility of the due process system. In a similar vein, we (also) look askance when the first step grievance appeals officer is ---- the same person who assessed the discipline."

(See also Third Division Awards 8431, 9832 and 24547 inter alia).

While the Board is hesitant "...to dispose of...claim(s) on technicalities" (Third Division Award 24547) it must conclude that the principles of fairness and impartiality required by the intent of Rule 27 must, nevertheless, be honored. The claim is sustained on these grounds alone.

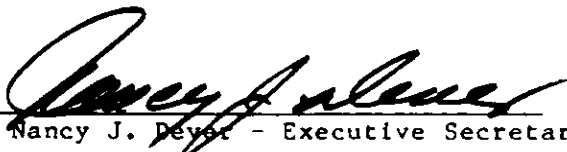
An additional procedural objection raised by the Organization before the Board relative to whether the Submission submitted by the Carrier was properly constructed in view of the 1958 NRAB Instructions for this Board, as well as the merits of the claim itself, need not be addressed by the Board because of its conclusions with respect to Rule 27.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

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