

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28671
Docket No. MW-28986
91-3-89-3-414

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(New Orleans Public Belt Railroad

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

(1) The thirty (30) day suspension of Bridge Patrolman J. A. Melerine for alleged violation of Rule 5 and General Order No. 220 on September 3, 1988 and '... refusal to answer questions of Assistant Bridge Supervisor Steven S. Arnoult ... on September 6, 1988....' was unwarranted, on the basis of unproven charges and in violation of the Agreement.

(2) The Claimant's record shall be cleared of the charges leveled against him and he 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.

Following an investigation of an accident on the Huey P. Long Bridge on September 3, 1988, Claimant was dismissed from Carrier's service. In a Hearing held on September 21, 1988, Claimant was found guilty of violating Carrier's Instructions to Bridge Patrolmen on the date of the incident, as well as General Order No. 220 on September 6, 1988. The dismissal, however, was rescinded and Claimant was assessed a thirty working-day suspension. The question of that suspension is before this Board.

Prior to a consideration of the facts of the case, the Organization has raised certain procedural arguments that this Board concludes have merit. The first is that the Manager of Engineering, the individual who initially investigated the accident and made the decision to terminate Claimant, refused to withdraw as Hearing Officer when requested by the Organization to do so.

He also served at the Hearing as a witness against Claimant and was the one who concluded that Claimant was guilty as charged. The second procedural violation was Carrier's failure to provide the transcript of the Investigation to the Board, in accordance with the Instructions for Preparing Submissions to the Third Division, dated December 18, 1958, as revised effective October 1, 1976.

While this Board does not quarrel with the procedure employed on Carrier's property of assessing discipline prior to a full investigation of alleged infractions, we do take issue with any carrier's failure to provide a fair and impartial hearing for employees who are the object of charges. In this case, the numerous roles played by the Manager of Engineering, i.e., as investigator of the incident that triggered the discipline, initial assessor of the discipline, hearing officer, witness, finder of guilt based on a review of the record of the hearing, and final assessor of the thirty-day suspension, strains the ability of any one individual to act with the degree of objectivity required in this instance. Not only are claimants entitled to an unbiased review, but there must not even be the appearance of bias. The integrity of the parties' Agreement requires no less.

As to the question of the failure to provide the transcript to the Board in a timely manner, we note that the Organization put the Carrier on notice to supply the transcript in its notice to the Board dated September 19, 1989, indicating its intent to file an Ex Parte Submission in the matter. The cited instructions of the Board provide that "...exhibits such as transcripts of investigations should not be presented by both parties to a case when one will suffice." Moreover, this Board has held in Third Division Award 27160 that the Carrier retains the burden of proving that its decision to discipline or discharge an employee is well founded and therefore is responsible for supplying the transcript.

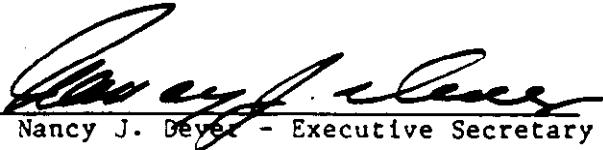
Because we find these procedural violations to be sufficiently significant, we must sustain the Organization's Claim without reaching the merits.

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 28th day of February 1991.