

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30835
Docket No. SG-31197
95-3-93-3-259

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & North Western Transportation Company:

Claim on behalf of W.G. Myers for compensation for all time lost and for removal of discipline from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 51, when it failed to provide the Claimant with a fair and impartial hearing and then imposed the arbitrary and capricious penalty of a ten-day suspension." Carrier's File No. 79-92-14. General Chairman's File No. S-AV-65. BRS File Case No. 8938-CNW.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Claimant in this case was assessed a 10-day suspension as discipline for an offense which occurred during his regular assigned tour of duty on January 13, 1992. The transcript contains substantial probative evidence, including an admission against interest by the Claimant, to support that he was, in

fact, working on company property without wearing his hard hat and side shields on his glasses in violation of Carrier's Safety and General Rules which deal with the issues of hard hat use and eye protection.

The case record also contains substantive proof that the Claimant had, in fact, been involved in previous disciplinary proceedings which placed him under the provisions of Carrier's published and well-known discipline policy which has been in effect since July, 1985. Under that policy, Claimant had been issued a written warning and had been assessed a 5-day actual suspension for prior derelictions of duty. In accordance with the provisions of the discipline policy, the 10-day suspension which resulted from this incident was the next progressive disciplinary step of the policy. The discipline policy in effect on this Carrier has been reviewed by several and various Boards of Adjustment and has been held to be in consonance with the Agreement. The policy as such is not challenged in this dispute.

Rather, in this case we have an argument from the Organization that the actions of the officer in charge of the Investigation were so egregious as to deprive Claimant of a fair and impartial Hearing on the charge thereby rendering the assessment of discipline a total nullity. They further argued that the assessment of discipline in this case was disparate in relation to other employees and should therefore be set aside.

The Board has reviewed the transcript and has considered the citations of authority presented by the Organization in this regard. The opinion expressed in Third Division Award 8431, to wit:

"In a long series of awards on discipline cases since the inception of this Board, the following principles have been developed and applied: (1) A carrier has the right to discipline an employe for just cause, including mainly violation of Carrier rules. (2) The Board will not presume to substitute its judgment for that of a Carrier and reverse or modify Carrier's disciplinary decision unless the Carrier is shown to have acted in an unreasonable, arbitrary, capricious, or discriminatory manner, amounting to abuse of discretion. (3) A Carrier's disciplinary decision is unreasonable, arbitrary, capricious, or discriminatory when

(d) the Carrier did not apply and enforce the rules with reasonable uniformity for all employees."

It is well reasoned and the Board finds no fault with it. However, the argument relative to disparate assessment of discipline is not a dispositive issue in this situation.

The record in this case contains clear and unequivocal admissions by Claimant that he was, in fact, in violation of the applicable Safety and General Rules. Such admissions negated the need for any further proof of guilt on the charge. Once the charge had been supported, the assessment of discipline therefore then came within the provisions and control of the discipline policy which mandated the assessment of a 10-day suspension as the third step in the progressive discipline policy regardless of how other employees might or might not have been handled for the same or similar offenses who may or may not be at the same progressive discipline level as the Claimant. The progressive discipline policy applies to the individual after the responsibility for a particular charge has been established by substantial evidence. Here the admission by the Claimant provided such substantial evidence.

This conclusion does not, by any means, excuse or otherwise condone the actions of this Hearing Officer who, without proper justification, restricted the development of testimony and evidence. The advice contained in Third Division Award 18963 is worth repeating, to wit:

"It is important that a Claimant be entitled to develop testimony which may have been pertinent to the case in order to insure that a Claimant receives a fair and impartial hearing.

* * *

... we feel that Carrier's actions in restricting the cross-examination of Carrier's witnesses by Claimant as well as the restriction placed on the testimony of Claimant and the introduction of exhibits, all as set forth aforesaid, prevented Claimant from receiving a fair and impartial hearing, and we will sustain the claim."

A Hearing Officer, to properly perform in such a capacity, must "exercise a degree of leniency in allowing a Claimant fully to develop his case within the basic framework of materiality" (Award 20853). Additionally, the advice contained in Third Division Award 20014 is also worthy of restatement in the hope that Hearing Officers will, at the very least, give the impression of conducting a fair and impartial Hearing. There the Board held:

"As fact finding investigations such hearings must be conducted with utmost fairness and objectivity by the hearing officer; they must not be impeded by technical rules of evidence and must accord employees reasonable latitude in developing their defensive positions."

But for the properly promulgated progressive discipline policy on this Carrier, coupled with Claimant's admission on the particular charge and his previous involvement in the progressive discipline policy, this case could well have been sustained as was done in Awards 18963 and 20014 referenced above. The on-property investigations are not a competitive game of wits in which the object is to obfuscate and/or otherwise prevent the discovery of all pertinent facts concerning the subject under investigation. Rather, the purpose of such hearings is to develop all pertinent information, both pro and con, relative to the matter being investigated so that those who later review the record as developed may be able to determine whether or not such testimony and evidence supported the conclusion to assess discipline.

There is nothing in this case record to support the contention that the discipline as assessed in this instance was discriminatory, arbitrary or capricious. It was assessed in conformity with the provisions of the progressive discipline policy currently in effect on this Carrier. The Board will not interfere with this assessment of discipline.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of April 1995.