

Award No. 9326

Docket No. SG-11144

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al. that:

(a) The Carrier violated the current Signalmen's Agreement, as amended, when it dismissed Signal Maintainer J. E. Hansel from service without just and sufficient cause and on the basis of unproven charges, and without conducting a fair and impartial investigation.

(b) The Carrier now reinstate Mr. J. E. Hansel with all seniority and other rights unimpaired.

OPINION OF BOARD: This is a discipline case. On March 26, 1958, while in charge of and operating a motor car, Claimant was involved in a head-on collision with another motor car. He was charged with violation of Rules 1 and 17 of the carrier's Rules and Instructions Governing the Use and Operation of Track Cars. Investigation was held on May 28, 1958. Claimant was notified that he was dismissed from service by letter dated June 11, 1958.

Claim of dismissal in violation of the applicable Agreement and for reinstatement of Claimant was progressed on the property without settlement and is appealed here.

The Brotherhood contends that the transcript of the investigation shows no just and sufficient cause for the dismissal of Claimant, that the charges were not proved, and that the investigation was not fair and impartial. This position is based on the refusal to permit the Brotherhood to have a private secretary present to make a record of the investigation for the Brotherhood, the denial of the request to exclude witnesses from the investigation until each was called to testify, the manner in which witnesses were questioned, a question at the investigation covering Claimant's prior record, the use of a sketch marked Exhibit No. 1 at the investigation, failure to afford Claimant an opportunity to be present when the sketch and preliminary investigation was made, failure to subject the other persons involved with the accident to charges and investigation and consideration of the testimony adduced at the investigation.

It is well settled that "it is not our function to weigh conflicting testimony, determine the credibility of witnesses or upset findings of fact based upon competent, if contradicted evidence". (Award 9199.) (See also Awards 8725, 2768 and 9230.)

The record shows Claimant and the General Chairman, who was designated by the Claimant as his representative, were present during the investigation, that the General Chairman cross examined the witnesses, that he had the opportunity to object to the manner in which questions were asked as well as to the form of the questions, and that he did object to a question concerning Claimant's prior record with the result that the question was not answered. No claim is made that Claimant did not receive proper notice of the charges or sufficient time to prepare for the investigation.

Rule 23 of the Agreement was not violated by the refusal to permit the Brotherhood to have a private secretary present to make a record of the investigation. There is no claim or evidence that the stenographer who recorded the investigation for the carrier was incompetent or that the transcript of the investigation, which was furnished by the carrier pursuant to Rule 23(f), is incorrect.

No rule of the Agreement provides for the exclusion of witnesses from the investigation until each is called to testify. This Board has held that in the absence of such a rule in the Agreement, the refusal to grant such exclusion of witnesses is not a denial of a fair and impartial investigation or violation of the Agreement. (Award 5061.)

The sketch complained of was a matter of weight and reliability of evidence and, therefore, under the Awards already cited, is outside of our functions. Claimant and his representative had the opportunity to attack and show any inaccuracy of the sketch when it was offered and marked as an exhibit at the investigation. No rule of the Agreement required the carrier to afford Claimant an opportunity to attend at its preliminary investigation of the accident and the preparation of the sketch; and it was for the carrier to determine against whom charges were to be brought by it.

On careful examination of the record, particularly the testimony shown by the transcript of the investigation, we cannot say that there is a basis, within our functions, for disturbing the carrier's determination to dismiss Claimant. (See Awards 1497, 3172, 3342, 5933, 8495, 8822, 9045.)

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March, 1960.