Award No. 11170
Docket No. DC-13344

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 351

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 351 on the property of the Illinois Central Railroad Company, for and on behalf of Brady Lenois, that he be restored to service with seniority rights unimpaired and compensated for net wage loss, account of Carrier dismissing Claimant from service in abuse of its discretion and in violation of the existing Agreement.

OPINION OF BOARD: Claimant was dismissed from service on August 11, 1961, for having struck and threatened a fellow employe following a quarrel over the seating and servicing of certain passengers in the dining car of a train enroute to its destination.

It is not denied that there was an altercation and that Claimant did strike the other employe.

The incident was reported to the Carrier by the dining car steward and an inquiry was conducted upon arrival of the train on July 31, 1961. Members of the crew (including Claimant) who might have had knowledge of what had occurred were questioned and their answers reduced to writing.

On August 1, 1961, Claimant received written notice to attend a formal investigation on August 7, ". . . for purpose of developing information and your responsibility regarding injury inflicted on Waiter Fred Smith and threatening gestures made toward him . . ." Statements taken at the July 31st inquiry were introduced in evidence in the record of this proceeding.

Following the investigation, in which Claimant and his representative participated, he was advised in writing of his dismissal from service for violation of General Rules 11 and 36, as a result of having struck and threatened his fellow employe.

Respondent has raised a procedural objection to the Board's consideration of this claim. It contends that the claim presently before us differs substantially from the claim considered and progressed through appellate levels on the property, where, it alleges, the petitioning Organi-

zation's request for a "reversal" of the decision to dismiss was, in fact, a plea for leniency. We do not agree with this theory. It is true that the Board may not entertain a claim which was treated as a request for leniency by the parties below. (Award 8478). It is also true that here no demand for specified monetary reparations was made by Claimant's representative on the property. There a reversal of the decision to dismiss was sought on three grounds: first, that the Company had suffered no damages by Claimant's actions; second, that the other employe involved, not Claimant, had initiated the altercation; third, that the Claimant had acted in self defense. The thrust of these allegations goes not to the equities of the case but to its substantive merits. They amount to a pleading that Claimant's dismissal was unjust; that, therefore, he should be reinstated and paid for all time lost as required by Article 25(e) of the effective agreement. Had the request for reversal been granted, it is clear that the Petitioner properly could have invoked the mandatory provisions of the rule. The request, therefore, was adequate notice to the Carrier of the scope and extent of its liability in money damages under the controlling agreement rule. It was not and could not have been treated as only a plea for leniency.

Accordingly the Board has considered the evidence and arguments advanced by the parties in support of their respective positions and finds that there is no valid or compelling reason why we should set aside or mitigate the discipline imposed.

Procedurally, Claimant's rights under Article 25 to a fair and impartial investigation were fully safeguarded. No charge of misconduct was brought against him until after the preliminary inquiry into the facts had been conducted. There is no evidence that witnesses (including Claimant) interrogated at the inquiry were coerced or intimidated. Their statements were given voluntarily. Claimant properly could have, but did not, refuse to answer questions or sign a statement in the absence of his representative or other counsel. We fail to find any evidence tending to support the allegation that the preliminary inquiry was prejudical to Claimant's rights under the agreement.

Nor is there any validity to the assertion that Claimant was not properly charged. True, the notice to attend the investigation did not specify an alleged violation of General Rules 11 and 36 but this omission standing alone, was not prejudicial error. It is sufficient (absent a special rule requirement) if the notice is so worded as to fully apprise the recipient of the nature of offense charged, so that he may become fully prepared to defend himself. Rule 25(c) of the effective agreement is controlling on the question of notice in this case. It says in effect, the notice must be in writing and timely served, and that it must contain "a clear and full statement of the cause of complaint". These requirements were fully met in the notice sent this Claimant.

It is too well established to require comment or citation of authority that this Board may not "re-try the case" in these discipline matters. What we look for on an appeal is prejudicial error adversely affecting an employe's procedural and substantive rights under the controlling agreement. This includes, of course, evidence of probative value that the Carrier in imposing the discipline acted without regard for these rights. Finally, the Board may exercise discretionary power in mitigating the discipline imposed where it is clear that the punishment, measured by the gravity of the offense committed, is harsh, excessive or unreasonable.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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

In this case, the Board finds no evidence sufficient to justify setting aside or mitigating the discipline imposed. Accordingly, the claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1963.