Award No. 11330
Docket No. TE-9987

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY (WESTERN DISTRICT)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Western District, Cleveland Union Terminal, that:

1. The Carrier violated the terms of the Agreement between the parties when, on July 20, 1956, Carrier unjustly removed M. D. Rice and improperly held him out of service on charges unproven.

2. The Carrier violated the terms of the Agreement between the parties when, on August 3, 1956, a 30-day record of suspension was placed on his service record and the time he was held out of service pending hearing was counted as actual discipline, also on unproved charges.

3. The Carrier violated Article 32 of the Agreement when the provisions of Article 32 were circumvented by Superintendent J. E. Guilfoyle rendering a decision in this case before the employe's immediate superior, V. J. Ruth, had made his decision, and improperly ordered V. J. Ruth to render a directed verdict made by Superintendent Guilfoyle.

4. The Carrier violated Article 32 of the Agreement and all rules of procedure when it failed to furnish the employe or his representative with a transcript of the hearing held on July 27, 1956, until August 9 and received by the employe's representative on August 10, 1956. Also that the transcript is not a true and accurate record of the hearing held July 27, 1956.

5. The Carrier shall now clear the record of M. D. Rice and compensate him for all wage loss suffered account of this unjust discipline.

OPINION OF BOARD: This is a discipline case. Claimant was taken out of service on July 20, 1956, by order of the Trainmaster who accused him of drinking while on duty and deserting his post of duty without permission.

On July 24, 1956, the Carrier notified Claimant in writing to appear at a hearing on formal charges of having violated Operating Rules 725, 852, and "G", while on duty on July 20, 1956.

The hearing was held on July 27, 1956, and a copy of the transcript is in evidence.

Under date of August 3, 1956, Carrier advised the Claimant as follows:

> "By order of Superintendent Mr. J. E. Guilfoyle, you are hereby notified that for violating Rule G while on duty as Operator, Erie Telegraph Office 'MS', on Friday, July 20, 1956, a thirty (30) day record of suspension is placed on your personal service record and that all time lost due to attending the hearing will be counted as actual discipline."

The parties agree the precise issue in this case is whether Claimant's suspension from duty pending the investigation (hearing) was a violation of Article 32(a) of the effective Agreement. It reads as follows:

> "(a) An employe shall not be dismissed or have discipline recorded against him until after a fair and impartial hearing. **An employe may be suspended pending hearing but shall not be held out of service pending hearing for minor offenses.**" (Emphasis ours.)

The emphasized portion of the rule makes it clear the suspension would have constituted substantial error only if violation of Rule G were considered a "minor offense". Petitioner argues that because Claimant was not "in an unfit condition to perform his duties" and was given only a 30-day suspension from duty the offense charged was considered a "minor" one by the Carrier. The Board, however, cannot accept as sound the theory that the measure of the seriousness of the offense charged may be found in the degree of discipline assessed. Management properly may exercise discretion in determining the punishment appropriate to the violation of its operating rules. And it may reasonably be assumed at this late stage in the development of rules and principles applicable to disciplinary cases that most Carrier officials know, or ought to know, the consequences of imposing unreasonably harsh or excessive punishment when the case is reviewed by this Board.

It is also evident from even a cursory examination of the Awards of the Board involving Rule G violations that the offense charged, if proven, results more often than not in dismissal from service — the most severe punishment management may impose. (For example, Awards 742, 833, 991, 3173, 3930, 3936, 4111, 4153, without Referee participation.) Any offense carrying with it the threat of imposing such a penalty certainly may not be treated as a "minor" one.

In view of the foregoing, the Board finds no error in suspending Claimant from service from and after July 20, 1956, pending investigation and hearing. Having disposed of the specified single issue presented, it is not necessary to discuss in detail the general allegations made by Petitioner other than to say that we find no procedural or substantive error in the record of this case sufficiently serious to warrant our setting aside the discipline imposed.

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 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

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 26th day of April 1963.