Award No. 13443
Docket No. TE-11854

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Texas and Pacific Railway, that:

1. Carrier improperly and unjustly disciplined B. R. Vaughn, Agent, Trent, Texas.

2. Carrier shall be required to clear his record.

OPINION OF BOARD: Claimant, the regularly assigned Agent-Telegrapher at Trent, Texas, before the station was closed and the position abolished, was found guilty of requesting and encouraging a patron of the Carrier to use its influence to the detriment of the Carrier in connection with the closing of the station. He was assessed 15 demerits. The Organization claims his trial and punishment were improper and seeks to have it reversed and his record cleared.

The Carrier takes the position that the case is moot and asks that the claim be dismissed. Under the Carrier's rules, the 15 demerits have ceased to exist insofar as the accumulative effect is concerned, because Claimant received no more demerits within one year from the assessment of demerits here involved.

We find the question is not moot. The punishment has been entered into Claimant's personnel record and will continue to affect that record so long as it remains. Although the sting of the punishment may be gone, his reputation as an employe continues to be impaired.

The Organization's first objection is that the charge against Claimant was not precise or specific. The notice said:

"You are hereby charged with requesting and encouraging a patron of this Company to use its influence to the detriment of this Company in connection with the closing of Trent station."

The applicable Agreement does not require that the charge be precise but it does require that he shall have a "fair and impartial hearing." Although what constitutes a fair and impartial hearing is not defined in the Agreement, we have in American jurisprudence a consensus on the broad outlines of what constitutes fairness in the judicial process. It requires that the accused be informed of the nature of the charge made against him in a form definite enough so that he may adequately prepare his defense.

The charge was so general that the Claimant did not know what actions of his were suspect and was unable to prepare his defense. This objection was the first recorded statement at the hearing. Nevertheless, Carrier made no attempt to apprise Claimant of the specifics of the charge or even to inquire in what respects the Organization found the charge vague. It merely noted the objection in the record and proceeded with the hearing.

The second objection was that the hearing itself was unfair in that the Superintendent acted in the triple capacity of accuser, witness and judge. While we cannot expect the Carrier to provide a judge who is not in its employ, the fact that the same person acts in this triple capacity structures the hearing against the accused.

The final objection is that the Carrier failed to prove the charge. The Claimant was found guilty solely on his own testimony that he had written a letter to a customer notifying it that a hearing would be held regarding the closing of the station and if they were interested to have a representative present. The letter gave the date and place of the hearing and said that if further information was needed they could contact the Organization's General Chairman.

On the basis of this letter, Claimant was found to have requested and encouraged a patron "to use its influence to the detriment of this Company" in connection with the closing of the station.

Under the standard used by the Carrier, many actions resorted to by employes which are generally considered acceptable would be subject to discipline. Any picket sign which appealed to customers not to use the railroad, any appearance at a public hearing on rate changes, or curtailment of service would be per se punishable because of their detrimental effect upon the Employer. There is no rule which requires that an employe give up his right to protest the policies of his employer or to enlist aid in furtherance of the protest so long as the employe's behavior in so doing is proper.

Carrier made no charge that Claimant acted improperly otherwise than that he wrote the letter. The mere writing of such a letter cannot in itself be held improper unless we are to deny employes any recourse whenever their own interests are at variance with their employer's.

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

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March 1965.