

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE SAINT PAUL UNION DEPOT COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5346) that:

1. Carrier violated the rules of the current Agreement when on March 22, 1962 they withheld William L. Shelton, Chauffeur, Mail and Baggage Department, Saint Paul Union Depot Company, Saint Paul, Minnesota, from service and on May 7, 1962 suspended him from service for a period of sixty days to and including July 5, 1962.

2. That the Carrier shall now be required to reimburse William L. Shelton for all loss of wages commencing March 22, 1962, and thereafter, and clear his record of any blemish resulting from Carrier's action.

OPINION OF BOARD: Following an investigation held on the property, Carrier assessed Claimant Shelton an actual suspension of sixty days on the ground that Claimant was proven guilty of improper and insubordinate conduct in connection with an incident occurring on March 22, 1962 shortly after the beginning of his 11:00 P. M. to 7:00 A. M. tour of duty. Petitioner contends this disciplinary action was in violation of Claimant's rights under the Agreement because: 1) Carrier failed to comply with the language appearing in the Discipline Rule (Rule 17) which declares: "The investigation shall be held within seven (7) days of the date when charged with the offense or held from service;" 2) The charges contained in Carrier's investigation notice were general and vague; 3) The Carrier failed to file charges against the Foreman with whom Claimant was involved in an altercation; 4) The investigation itself was not conducted in a fair and impartial manner; and 5) The investigation did not disclose "positive proof" that Claimant was guilty of the charges made against him.

The record discloses that on April 2, 1962 Carrier issued written notice to Claimant listing the charges made and setting the investigation for April

6. Thus the investigation was scheduled to be held within seven days of the notice. But Petitioner contends Claimant was held out of service on March 22, 1962 and thus the investigation was required to be held not later than March 29. The weight of the evidence indicates, however, that Carrier did not hold Claimant out of service on March 22 or on any subsequent date prior to the commencement of the sixty day actual suspension. Claimant voluntarily absented himself from duty before the end of his shift on March 22, 1962. He also remained out the following day without direction from the Carrier. March 24 and 25 were his rest days. Claimant returned to duty on March 26 of his own accord, without any instruction from the Carrier, and continued working until his sixty day suspension began on May 7.

We find that the charges contained in Carrier's investigation notice to Claimant were sufficiently precise to enable him to prepare his defense. We further find that the investigation was conducted with due regard for Claimant's rights. There is no showing of improper or prejudicial conduct by the Carrier representative who conducted the proceeding. During the course of the proceeding the Carrier made a prima facie case of improper and insubordinate conduct on the part of Claimant Shelton. Claimant was represented at the hearing by two duly accredited representatives. Claimant also called a witness to testify in his behalf.

Petitioner contends that Carrier improperly failed to call two individuals who were witnesses to the disputed incident. But since Carrier made a prima facie case against the Claimant, it was Claimant's responsibility to call such additional witnesses as he deemed necessary to provide an adequate defense. If Claimant did not become aware of the existence of additional witnesses until after the investigation began, he could have availed him of the right provided in Rule 17 to obtain adjournment of the hearing pending the availability of such witnesses. No adjournment request was made, however.

We think the Carrier's failure to file charges against the involved Foreman (who also is covered by the Clerks' Agreement) was no defense to the Claimant. The Foreman appeared at the investigation and gave testimony, which Claimant was provided an opportunity to rebut.

Sufficient evidence was adduced at the investigation to support Carrier's determination that Claimant engaged in improper and insubordinate conduct on March 22, 1962. The sixty day actual suspension assessed against Claimant because of this conduct was not arbitrary, capricious or otherwise excessive under the circumstances.

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 Employees involved in this dispute are respectively Carrier and Employees 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 28th day of May 1965.