

Award No. 13831

Docket No. CL-14328

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5421) that:

(a) Charges filed against Mail Handler E. Smith that he violated Carrier rules were not proven beyond any reasonable doubt, and;

(b) The decision of guilt and assessment of a fourteen calendar day suspension with loss of ten days' compensation was not a proper judgment on the evidence developed at the investigation, and;

(c) The record be cleared of the charge and Employee Smith be reimbursed for the ten days' loss of compensation.

OPINION OF BOARD: The facts herein were agreed upon and submitted jointly. Claimant was found guilty of the following charge:

"... while handling mail in Car No. 3442 on Santa Fe Train 123 at about 5:00 P. M. you were smoking a pipe, and at about 10:00 P. M. you climbed over a load of mail while getting into Car No. 3082 on Union Pacific Train No. 69 with a lighted cigarette in your mouth, the latter incident after having been forewarned by Foreman Lee Culver."

The decision stated that the "... evidence adduced proves beyond any reasonable doubt that you were in violation of rules as charged." Claimant was suspended for fourteen days.

The Employees attack the verdict and punishment on the grounds that the charges were not proved beyond any reasonable doubt and that the punishment was excessive.

Although the original verdict stated that the charges were proved beyond any reasonable doubt, Carrier, on appeal, characterized the evidence as having "proved conclusively" that Claimant had violated the rules, and later stated that the evidence "fully supports" the discipline assessed. The Employees seized upon this receding standard of proof as having significance, as though it indicated a growing loss of faith by the Carrier, itself, in its original verdict. The Employees ask that Carrier be held to its original standard and that the record be examined to determine whether the proof was indeed beyond any reasonable doubt.

The difficulty with this argument is that the standards for the quality of proof needed to sustain a finding of guilt in a discipline case are not established by the Carrier ad hoc in each case. The standards have been set by this Board and are meant to apply universally to all cases. The fact that Carrier in this case in a burst of conviction described the evidence as proof beyond any reasonable doubt does not change in any degree the degree of proof we require. We are still concerned with whether or not there is substantial evidence to support the verdict and, if there is, the verdict must be sustained even though the Carrier boasts that it is overwhelming, when in our judgment, it may not be quite that strong.

We think that the evidence of guilt in this case was substantial. Carrier's evidence was direct, and was corroborated by a fellow mail handler who had no stake in the outcome of the case. There is no evidence that the corroborative evidence of this witness was anything but disinterested. The attacks made by the Employees to show that he was contradictory and evasive are not borne out by careful study of the transcript.

The record is devoid of any evidence that Carrier's action was "arbitrary, capricious, without just cause, or based on doubt or speculation", to use the standards we set in Award 9449.

The Employees' attack upon the severity of the punishment is equally without merit. Carrier based the punishment on (1) the seriousness of the offense and (2) Claimant's service record. The Employees complain that Carrier did not consider that this was a first offense.

More specifically, it says that there was no record that Claimant was ever previously warned. The fact is that he was warned at 5:00 P. M., but he, nevertheless, repeated the offense 5 hours later. Thus, since he had been warned once without effect, there was no reason to believe another warning would be more effective. Carrier's decision to suspend him was, therefore, not arbitrary, capricious, or without reason, nor is there anything in the record to show that Carrier treated him more severely than anyone else.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1965.