

Award No. 15368
Docket No. SG-16169

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Florida East Coast Railway Company that:

Carrier's action of dismissing Ossie McGee from service March 23, 1965, was prejudiced, prejudged, unfair and discriminatory, and it should be reversed. (Carrier's File: 2)

OPINION OF BOARD: Claimant was dismissed from service for violation of Carrier's General Rule R and former Assistant General Manager's Circular No. 1 by assaulting Conductor George Bruaw with a deadly weapon.

At the investigation Claimant testified that he was on picket duty at the time of the alleged assault and offered to produce witness to substantiate the fact. However, the officer conducting the investigation refused to let the witness testify upon ascertaining that he had no knowledge of the assault on Bruaw.

In our Award 10260 we quoted with approval from First Division Award 18847 as follows:

"The right of an employe to have witnesses called on his behalf is so fundamental that we often have upset disciplinary proceedings with that either as one of the bases for our censure or the sole one. (Awards [First Division] 8260, 10348, 11820, 13633, 14351, 14354, 14358, 16333.) Sometimes we have severely criticized the hearing officers for highhandedness in the denial of this right, and while we do not do so in this instance, we adhere to our settled view that the reasonable opportunity to present witnesses in his own behalf is a right of an employe which must not be abridged, and therefore the claim must be sustained."

Special Board of Adjustment No. 707 had occasion to deal with the same incident and in its Award No. 11 sustaining the Claim of the employe there involved (a switchman) said:

"At the investigation the claimant testified that he was playing cards at the time of the alleged assault and offered as a witness one

on the persons with whom he claimed to have been playing. The officer conducting the investigation refused to let the witness testify after ascertaining that he had no knowledge of the assault on Bruaw. Such refusal vitiated any possible finding that claimant was accorded a fair and impartial investigation, as required by Article 34, because it amounted to a refusal to consider any alibi evidence offered by the claimant and indicated prejudgment that the identification by Bruaw was true and correct."

Also, see our Award 12242, Second Division Award 1965 and First Division Award 20906.

We will sustain the Claim.

The record also contains matters not pertinent to the dismissal of Claimant, therefore, we do not pass on them. Our decision is confined to the issue raised in the Statement of Claim.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of February 1967.