Award No. 16065
Docket No. SG-16077

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri Pacific Railroad Company that:

> Carrier be required to compensate Signal Foreman E. N. McKinnon for wages he lost as a result of a ninety-day suspension assessed in connection with the removal of an air hose from Sand Tower at Pine Bluff, Arkansas, on October 27, 1964.

OPINION OF BOARD: Claimant cut some hose from its connection with a Sand Tower and removed it to outfit camp cars to obtain a water supply for his men. When it was found (before he had time to put it to his intended use), and he was questioned about it, he denied any knowledge of it until it became clear that Carrier's agents would persist in investigating, then he told the truth. Thereafter he was notified in writing:

> "Formal investigation will be conducted starting at 10:00 A.M., Thursday, December 3, 1964, in New Yard Office at Pine Bluff, Arkansas, to develop facts and place responsibility account a portion of air hose cut off and removed from Sand Tower in old yard at Pine Bluff, Arkansas, some time prior to 2:00 P.M., on October 28, 1964, without authority.
>
> "You will please arrange to be present at this investigation, bringing any witnesses desired, and you may have present chosen organization representative of your craft if you so desire.
>
> Please acknowledge receipt and understanding of this letter on second copy and return to my office."

The hearing was held as scheduled. At the outset of the hearing, the Organization contended, as it does in its Submission to us, that the above-quoted notice did not meet the requirements of Rule 700(b) that Claimant should have been notified in writing not less than 72 hours in advance of the time set for the investigation "of the charges", in that it does not specify a charge specifically against Claimant. Subsequent to the hearing,

Carrier imposed a ninety day suspension on Claimant. The Organization claims that even if its procedural contention is not sustained, the amount of the discipline was cruel and excessive.

Rule 700(b) should, for our purposes here, be read in context as immediately following 700(a):

> "(a) An employe who has been in service more than sixty (60) days shall not be disciplined or dismissed from service without first being given an investigation.
>
> (b) Prior to the investigation he shall be notified, in writing, of the charge not less than seventy-two (72) hours in advance of the time set for the investigation to permit of his having reasonable opportunity to secure the presence of necessary witnesses. . . ."

It is clear that "the investigation" referred to in (b) is the one required by (a) for an employe who is charged with an offense which may lead to discipline; thus, the infraction recited in the formal notice is clearly intended to notify the employe to whom the notice is addressed of the specific charge against him; in this case, it was a clear statement of the alleged dereliction. In addition, the purpose stated in Rule 700(b) for the notice of charge is "to permit of his (the employe being given the investigation) having reasonable opportunity to secure the presence of necessary witnesses"; there is no indication in the record that Claimant was prejudiced in this respect by either the form or the choice of words in which the notice was couched. We conclude that the Organization's procedural contention is without merit; Claimant was given adequate, timely, and proper notice under Rule 700.

In determining whether the amount of discipline imposed by Carrier was unreasonable, we start from the premise that (except in cases of discharge which is warranted by serious offenses or by incorrigibility of an offending employe), the purpose of discipline is not primarily punitive, but corrective; we will not substitute our judgment as to what amount of discipline is necessary to try to correct the guilty employe's future conduct, so long as the Carrier's judgment is within reason.

Many factors may be considered in deciding how much of penalty is reasonable for a particular offense by a particular employe. Among them is an assessment of the potential corrigibility of the particular employe which may be judged from his whole record and from how he conducts himself in connection with the particular offense with which he is currently charged; and comparison with penalties assessed other employes similarly situated; and the effect of the offense and the penalty on operations and on other employes. Thus, for instance, it was reasonable in this case for Carrier to consider Claimant's dishonest reactions when he was first faced with the discovery by Carrier of his dereliction: it was relevant to the question of how much punishment might be required to achieve the desired corrective result.

The only standard offered by the Organization was that the cost of repairing the damage which actually resulted from the cutting of the hose did not exceed $1.00, while the discipline invoked lost the Claimant over $1500.00; on this basis the Organization argues that the discipline was "cruel and excessive" for "such a trivial offense."

While the comparison offered by the Organization is relevant, the weight of the offense cannot be judged on that basis only; in this case there was no charge that the Claimant was taking the hose for his own use; had that been the charge, the cost comparison would have greater weight proportionate to other proper considerations in measuring the amount of penalty. But what we have here was a demonstration by a foreman of irresponsibility in his attitude toward the proper, safe and efficient operation of the railroad together with an attempt by him when he was first faced with the discovery of his dereliction to avoid the consequences, i.e.: to avoid correction.

Under all of the circumstances, while if the original decision as to the amount of penalty needed were ours, we might well have imposed a lesser penalty, and while we believe the ninety-day suspension was extreme, in the absence of any other basis for comparison supplied in the record before us, we cannot find that it was beyond reason.

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 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 25th day of January 1968.

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