

Award No. 16637

Docket No. CL-17314

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

**THE UNION TERMINAL COMPANY
(Dallas, Texas)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6385), that:

(a) The carrier violated the current Clerks' Agreement when on December 23, 1966 it arbitrarily and capriciously discharged Red Cap Lawrence C. Boson from the service of The Union Terminal Company.

(b) That Red Cap Lawrence C. Boson be paid a day's pay for each day from December 23, 1966 through February 21, 1967 he could have worked had he not been arbitrarily and capriciously discharged from the service of the Union Terminal Company.

OPINION OF BOARD: This is a disciplinary case, wherein Claimant on December 23, 1966 was working his regular assignment as a Red Cap for the Union Terminal Company. On that date he was instructed by the Company's General Manager to clean up an area of the terminal. An altercation ensued and Claimant was summarily dismissed from service on that date. He requested a hearing, which at his request was postponed. On January 13, 1967, Claimant was advised by the Carrier that he could return to service effective January 15, 1967, but he refused and again requested a hearing. This was held on February 17, 1967 at his specific request, as a result of which the charge against him was sustained. He eventually returned to service on February 28, 1967, but charges that Carrier's action of Dismissal was arbitrary and capricious, hence in violation of the Agreement and accordingly demands back pay from December 23, 1966 to February 21, 1967.

Petitioner first attacks the notice informing him of the charge lodged, on the grounds that it was not sufficiently precise. We have examined that notice and find that it possesses those specific elements prerequisite to reasonably informing Claimant of the matter against which he is to defend him-

self. The pertinent words of that notice, "a formal investigation . . . to develop facts and responsibility in connection with your alleged insubordination on December 23, 1966", are adequate for him to prepare his defense. As we said in our Award 16115, "The charge need not have that degree of specificity normally associated with a criminal indictment."

While it is true that there is some conflict of testimony in the record between the two principally contending witnesses, the General Manager and the Claimant himself, it is not our function to resolve such a conflict. We are not able to judge the credibility of witnesses since we were not present to observe their conduct and demeanor. The hearing officer was present and on the basis of testimony received, made his decision. Suffice it to say that based on the record, his decision was neither arbitrary nor capricious.

Claimant toward the end of the investigation was asked

"Q. Mr. Boson, are you satisfied that you have been afforded an opportunity to make a full statement and have been given a fair and impartial investigation?"

A. I am perfectly satisfied with the way it has been conducted."

From our review of this record, we agree with Claimant that he was given a fair and impartial investigation. He was first properly and adequately apprised of the nature of the charge against him. He was given the right to face his accuser, to cross examine him, to present his own testimony and to present other witnesses on his own behalf if he so chose. The record before us is eminently fair and impartial. We will deny the 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 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 18th day of October 1968.

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