



Award Number 17310

Docket Number CL-17780

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6477) that:

1. The Southern Pacific Company violated the current agreement between the parties when on November 6, 1967, it arbitrarily dismissed Mr. R. D. Nolen from service following investigation, because:
 - (a) The summons failed to meet the requirements of Rule 47 precedent to its right to hold a hearing.
 - (b) The officer who cited Mr. Nolen testified at the trial, thereby acting in dual capacity of prosecutor and witness for the prosecution.
 - (c) The decision was not made by the conducting officer, but by another carrier officer who had no opportunity to evaluate the testimony by personal observation.
 - (d) A copy of the transcript of testimony adduced at the hearing was not furnished to Mr. Nolen's representative until the 37th day following the investigation, after two decisions had been made, contrary to the terms of Rule 48.
 - (e) The decision on appeal was made prior to conference in violation of Rule 49.
2. The Southern Pacific Company shall now be required to restore Mr. R. D. Nolen to service with all rights unimpaired and to compensate him for all wage loss from November 6, 1967, until restored to service with all rights unimpaired.

OPINION OF BOARD: Claimant, one of Carrier's employees for almost twenty-five (25) years—with several past dismissals-from-service, was charged with being under the influence of intoxicants while on duty as a Train Clerk, in violation of Carrier's General Rules. Claimant was dismissed from service on the basis of the findings at the Hearing.

Employees have raised several threshold questions of procedural deficiencies, which are alleged to have denied him his contractual rights under the controlling Agreement.

We find that in respect to one of these considerations, the record supports Claimant's allegation of a denial of a procedural right. This is regarding the alleged violation of Rule 48, by reason of the fact that Employees were not furnished with a Hearing transcript until after the elapse of thirty-seven (37) days from the date of said Hearing.

Rule 48 states:

"A transcript of the evidence taken at the investigation or on the appeal shall be furnished on request to the employe or representative, who shall, if desired, have ten (10) days in which to offer evidence in rebuttal."

At the conclusion of the Hearing, Claimant's representative requested a copy of said transcript from the Hearing Officer. It is also alleged that a subsequent request for said transcript was made later. However, it was not until some thirty-seven (37) days after the Hearing—thirty-two (32) days after the decision of dismissal was rendered, that Employees were supplied with said transcript.

Carrier contends that this procedural point is irrelevant, i.e., that there is no rule requiring the furnishing a transcript copy within a given time nor was the delay here proved prejudicial or unreasonable. It is true that Rule 48 is not explicit on the point of time in which the transcript should be made available to Employees. However, in Rule 49, each appellate step and each time period designated in which a decision must be rendered by Carrier carries a time limit of ten (10) days, and a reasonable construction of Rule 48—that the transcript referred to therein be furnished on request to Claimant or his representative—is that it follows that such must be available to the requestor in order to afford a reasoned reaction within the ten (10) days to decide whether to appeal and upon what grounds.

The purposes of the Agreement grievance processing and appellate procedure are to enable the parties to address themselves properly to each phase of the existing controversy. Claimant was deprived of one of necessary tools in one of these vital phases.

Our examination, however, of the merits of Carrier's charges against Claimant shows said charges to have been substantiated.

Under these circumstances, the combination of procedural denial and Carrier's convincing case on the substantive merits of its charges against Claimant, it is our opinion that the instant claim should be sustained to the extent of reinstatement, but denied as to back compensation.

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.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1969.