



Award Number 17761

Docket Number TE-17463

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
READING COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Reading Company, that:

1. The Reading Company (Carrier) violated our current Agreement on January 19, 1967, when an "investigation" was conducted because of a derailment occurring on January 6, 1967, unjustly assessing discipline to Claimant R. A. Edelman of five (5) actual days (January 19, February 9, 10, 11 and 12, 1967).
2. As a consequence of the above violation, the Carrier is required to pay Mr. Edelman for all time lost and consumed, as a result of this "investigation," making Claimant whole, clearing his record of this discipline.

OPINION OF BOARD: The Employees contend that the notice delivered to Claimant to appear on January 19, 1967 for "hearing and investigation" in connection with the derailment in Train PT 7 on January 6, 1967 does not comply with Article 32(b) of the Agreement in that said notice did not, with specificity, apprise the Claimant of the exact nature of the charge against him nor the manner in which he allegedly was responsible for the derailment.

We are not persuaded that the notice was improper or failed to satisfy the requirements of Article 32(b) of the Agreement. The notice and the contents thereof are sufficient to inform the Grievant that he is being held responsible for precipitating the derailment. We are of the firm opinion that the notice is not lacking in any significant detail and accordingly we must hold that it complies with the provisions of Article 32(b).

The Employees further contend that Carrier has not proved that the Claimant "pulled" the levers while some of the cars were still in movement over the switches and therefore has not established his responsibility. The record however, does not support the Employees contention. While it is true that a portion of the evidence presented at the hearing was circumstantial in nature, there is ample evidence of probative value to sustain the Hearing Officer's conclusion that the Claimant did operate the levers before the entire train had cleared the switches.

The Employees further maintained that it cannot be said that the Claimant was solely responsible for the derailment in light of the fact that the Signal Maintainer was in the Tower, working on the electrical equipment

therein, when the derailment occurred. It concludes therefrom that the Signal Maintainer also had a responsibility for the accident, yet was not disciplined for his actions. The Employees therefore reason that since the Claimant was not solely responsible for the derailment, he should not be disciplined while the Signal Maintainer is not held responsible for his actions.

This Board has ruled on many occasions that the failure to discipline or file charges against one employee cannot be used as a defense by another employee for his improper conduct or for acts of negligence on his part. We are in full agreement with this general principle and find it applicable to the instant situation. See Awards 3321, 3342, 8488, 9034, 9444, 9935, 11003, 13399, 13641, 13643, 15931, and 15978.

We find from the evidence contained in the record that the Carrier was justified in disciplining the Claimant for his actions in precipitating the derailment of train PT 7, and we must therefore 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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1970.