

Award No. 18035

Docket No. CL-18571

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

David Dolnick, Referee

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**PARTIES TO DISPUTE:**

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6725) that:

1) Carrier's handling of appeal hearing of employe Gordona Stojanovic, requested in accordance with the provisions of Rule 22(c) was unfair, unjust, discriminatory and contrary to the provisions of the rule.

2) Carrier shall be required to reinstate employe Gordona Stojanovic to service with seniority and all other rights unimpaired and compensate her for all time lost less any amount earned in other employment.

**OPINION OF BOARD:** Claimant was charged with being tardy for work, leaving her assignment without authorization and insubordination on September 16, 1968 and for the failure to protect her assignment on September 17, 1968. An investigation was held on September 23, 1968. She was dismissed from service by letter dated September 24, 1968.

There is no dispute about the facts. "The sole issue in the case", say the Employes, "is whether the Carrier failed to meet the requirements of the Rule, that of affording employe Stojanovic a fair and impartial hearing under Rule 22(c) on October 11, 1968 when Mr. Heinan refused the request made by the Employes that a transcript be made of the evidence the Employes wished to present; also to present witnesses and testimony."

Rule 22 prescribes procedures in discipline cases. Paragraph (a) and (b) provide for investigations and how and when an employe may be held out of service pending an investigation. After an investigation and after the assessment of a penalty an appeal may be taken under paragraph (c) which reads as follows:

"(c) An employee dissatisfied with the decision may have a fair and impartial hearing before the next higher officer, at which such witnesses as are necessary and duly accredited representatives, as specified in Rule 52, may present the case provided written request is made to such officer and a copy furnished the officer whose decision is appealed within ten (10) days from date of advice of decision. The hearing shall be held within ten (10) days after completion of hearing. Copy of evidence taken in writing at the investigation or hearing will be furnished to the employee and his representative on request."

There is no complaint about the conduct or the procedures of the investigation held on September 23, 1968. Employees admitted that the Claimant had a fair and impartial investigation. A verbatim report of the evidence and the proceedings was taken and a copy was furnished to the Claimant and to her representative. Employees' complaint about a transcript and testimony relates only to the appeal hearing under Rule 22(c).

In Award No. 10547 involving the same parties and the same Agreement the Board held that under Rule 22(c) the "conjunction 'or' unmistakably indicates that the Carrier has a choice or alternative. The Carrier can make a transcript of proceedings at the investigation or at the hearing. The choice rests with the Carrier. In the instant case it fully complied with the language of Rule 22(c) by electing to make a transcript of the **investigation proceedings.**" (Emphasis retained.) This is a fair and reasonable interpretation of the rule and is applicable and is here adopted.

Rule 22(c) is more than a proforma undertaking. We agree with Award No. 10547 that it "means something more than reviewing an investigation transcript and concurring in lower officer's decision. It means that an appeal officer must exercise free and independent judgment in reaching his determination . . ." But, as in the case adjudicated in Award No. 10547, there is no doubt that the Claimant is guilty. "A guilty party", said the Board in Award No. 10547, "... no matter how often heard impartially — will remain guilty . . ." A person who consistently proclaims his innocence and appeals on that issue is entitled to a "fair and impartial hearing" but where the Claimant, as here, is admittedly guilty another hearing under Rule 22(c) could result in no different conclusion. It is, then, when the Claimant admits guilt that the Carrier may review the appeal on the transcript of the investigation alone, and need not hear witnesses. For this reason, Carrier was not in error when the next higher officer refused to hear additional testimony.

The appeal was addressed to Mr. J. Jacobson, Assistant Comptroller, who directed Mr. R. P. Heinan, Manager of Regional Data Offices to review the case. Mr. Heinan conducted a hearing on October 11, 1968 at which the Claimant and her representative were present. A decision was rendered by Mr. Jacobson on October 17, 1968. The fact that the higher officer rather than the hearing officer rendered the decision is not a violation of the rule.

**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 the 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 17th day of July 1970.