



Award No. 18603

Docket No. TD-18830

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

BURLINGTON NORTHERN INC.

(Formerly Chicago, Burlington & Quincy Railroad Company)

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Chicago, Burlington and Quincy Railroad Company (now Burlington Northern, Inc.) (hereinafter "the Carrier") violated the effective Agreement between the parties, Article 24 thereof in particular, when it withheld Train Dispatcher E. A. Miller from service January 21, 1969 to February 16, 1969 in its Cicero, Illinois office because of its failure to accord a fair and impartial hearing and meet the burden of proof in establishing the charge made against him.

(b) Claimant's personal employment record shall be cleared of the entry of censure as set forth in Carrier's Form 2741 dated February 14, 1969.

(c) Claimant shall now be compensated for time lost from his assignment, namely January 21, 22, 23, 26, 27, 28, 29, 30 and February 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1969.

(d) The amount of compensation claimed in paragraph (c) above shall be subject to the payment of interest thereon at the maximum rate permitted by the statutes of the State of Illinois.

OPINION OF BOARD: This claim arose out of the consolidation of two of Carrier's dispatching offices formerly located at Ottumwa, Iowa and Cicero, Illinois, wherein personnel in both offices were generally relocated with headquarters at Cicero, Illinois. The consolidation took place on December 3, 1968.

The parties concluded an implementing agreement by which employees who were required to change their place of residence to acquire a position with the Carrier would be allowed relocation allowance. Claimant admittedly qualified for the relocation allowance, being assigned to a position at Cicero.

Claimant worked at Cicero January 14 and 15, 1969, then returned to Newport, Minnesota to spend his two weekly rest days with his family. While

at Newport on January 18, 1969, Claimant telephoned the dispatching officer at Cicero to advise that the relocation funds due him had not been received, and that, for this reason, he would be unable to protect his assignment on the following day or any subsequent day until he had received the funds due him so that he could meet his living expenses while working away from home at Cicero. This was relayed to the appropriate Carrier officer who arranged the necessary relief.

On January 20, Claimant received notice to attend an investigation on January 24, relative to his not protecting his assignment as dispatcher on January 19, 1969. He was held out of service pending completion of the investigation. He received his relocation allowance the same day.

As a result of the investigation Claimant was censured for violation of Rule 702, by absenting himself from his assignment on January 19, 1969 without proper authority.

At the outset it should be noted that the notice of investigation sent to Claimant was not defective. The criteria established by numerous Awards of this Board is that the notice must be sufficient to enable the employee to adequately prepare his defense. The notice in the case at bar met this test.

It is not our function, given our limited scope of review in cases of this nature, to weigh the evidence and then determine if our decision would be the same as that reached by the Carrier. But, rather, it is for us to look at the record and ascertain whether Carrier's decision was unreasonable, capricious or arbitrary.

At the investigation Claimant admitted that he did not receive proper permission to lay off. Consequently, there was sufficient evidence to support the finding of guilt. Such finding supports a penalty. Guilt having been found, the issue now arises: Was the penalty imposed unreasonable, unfair, or unconscionable under the circumstances? We believe that the penalty was unreasonable.

Claimant exercised reasonable diligence in attempting to notify Carrier that he was laying off. In fact, notice was given to Mr. Cornwell, Carrier's proper officer to receive same, that Claimant would be unable to protect his assignment on Sunday, January 19, 1969. This notice was given Mr. Cornwell, albeit not by Claimant personally, in sufficient time to enable Carrier to provide relief for Claimant's position. There can be no doubt that Claimant believed he had properly apprised Carrier of his impending absence. Nor can it be denied that Claimant had sufficient reason for said absence.

We, therefore, conclude that while his record should not be cleared of the entry of censure due to the admitted violation of Rule 702, Claimant should be compensated for time lost from his assignment during the period January 21 to February 16, 1969, without interest thereon.

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 in part (c) of the Claim; but was not violated in parts (a), (b) and (d).

AWARD

Part (c) of the Claim sustained; Parts (a), (b) and (d) are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1971.