Award No. 19064
Docket No. SG-19477

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Baltimore and Ohio Railroad Company that:

Carrier violated the Signalmen's Agreement in connection with investigation and dismissal of Signal Maintainer George T. Conroy.

Signal Maintainer George T. Conroy be reinstated at some early date to the position of Signal Maintainer at Glenshaw, Pa.

(Carrier's File: 2-SG-41.)

OPINION OF BOARD: There is no dispute over the fact that Claimant falsified his application for employment. Petitioner urges, however, that the discipline administered is improper because of Carrier's failure to abide by Rule 50 and 51 of the Agreement. Petitioner contends that the letter of March 4, notifying Claimant of the investigation, failed to state the "exact charge or charges" being made against him as required by the Rules. Petitioner contends further that Claimant was denied an appeal hearing as provided in the Agreement.

As to the first contention involving the notification of the hearing, the purpose of the Rule is to require Carrier to advise employes in sufficient detail so that they may prepare their defense. It is not to create technical loopholes through which properly disciplined employes may escape. The relevant part of the letter of March 4 sent to Claimant reads:

"You are charged with responsibility in connection with misrepresenting information on employment application, form PR-5 * * *."

We find that the letter clearly sets forth the basis of the investigation and in our opinion meets the requirements of the Rule. Accordingly, we find that the case is properly before us and that the hearing which resulted was conducted in a fair and impartial manner, as required by the Rule.

As to the remaining procedural issue, Carrier does not deny that it failed to accord the appeal hearing required by Rule 51. It defends its action by contending that it could dismiss an employe at any time for falsification of his

application. It contends further that the Claimant's employment was temporary pending approval of his application and Carrier did not have to grant a hearing in the first place. Moreover, Carrier contends that the Rule does not apply as the Petitioner in the "progression of this claim * * * at no time included therein a request for lost pay which is tantamount to requesting reinstatement * * * on a leniency basis." Finally Carrier contends that a second or appeal hearing would have been "superfluous and would not serve to exonerate him in any way lessen his guilt."

The question for decision is not whether Carrier had a right to dismiss Claimant after learning of his falsification but whether he had been in Carrier's employ long enough to have acquired the protection afforded by the Agreement. Claimant, the record shows was in service 10 months on the date of the hearing, March 10. This is a period substantially greater than the thirty days needed to receive the protection of the Agreement. Rule 50 reads as follows, in part:

> "(a) An employe who has been in the service more than thirty (30) days will not be disciplined or dismissed without a fair and impartial hearing he * * *"

Having served the requisite time the protection afforded by the Agreement was available to Claimant. We find that the statement on the application giving the Carrier the right to discharge because of falsification does not supersede the collective Agreement. If Carrier wanted an exception to Rule 50 in cases of falsification it should have sought it through the collective bargaining process. We are persuaded that the sound cases adhere to this approach for to allow an individual agreement to erode the collective agreement would leave the process of collective bargaining meaningless. O.R.T. v Railway Express Agency, Inc. 321 U. S. 342; Awards 5793, 11958 and 2602 and others.

The mere fact that a petitioner did not seek back pay on the property does not turn an otherwise claim into a plea for leniency. There may have been many reasons for Petitioner's failure to seek a full remedy. What they are we do not know. We shall not speculate nor impute to Petitioner some purpose other than the stated desire of having Claimant returned to work. Carrier should not be heard to complain when Petitioner seeks less than the ultimate. The record clearly shows that Petitioner contested the initial decision as being unfair when it sought the appeal hearing. Petitioner did not designate its action a plea for leniency and in the face of acts which point to the contrary, in the absence of any probative evidence offered by Carrier, we will not read such an intention into their actions.

Whether the second or appeal hearing would have merely resulted in an affirmation of the initial decision is beside the point. The right of the Claimant to the hearing is clear and its denial, on whatever grounds, is arbitrary and unreasonable.

Were it not for the failure to grant the second or appeal hearing this matter would have been denied. As it is the claim must be sustained. Thus we will sustain the claim as presented.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March 1972.

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