

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19412  
Docket Number CL-19706

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
PARTIES TO DISPUTE: (  
(The Chesapeake and Ohio Railway Company  
( (Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7079):

(a) That the Carrier violated the Clerks' General Agreement when, beginning at 8:00 a.m. Thursday, December 17, 1970, it relieved Mr. Bertram L. Hill from active service with the Chesapeake & Ohio Railway Company, and,

(b) That Mr. Bertram L. Hill be restored to service with his full seniority and compensated for all wages and wage equivalents lost for the period he is held out of service because of the Carrier's wrongful action.

OPINION OF BOARD: This claim arose from the Carrier's charge that Claimant, Mr. Bertram L. Hill, was absent from his assigned position for an excessive amount of time on November 14, 1970. The basic question involved in the charge was whether Mr. Hill took an excessive amount of time for his lunch period on the date in question.

Following a December 9, 1970 Inquiry on the charge, the Carrier found Mr. Hill at fault on the charge and dismissed him from service effective December 17, 1970. In administering the discipline of dismissal, the Carrier took into consideration Mr. Hill's past record.

On November 14, 1970 Mr. Hill had been employed by the Carrier for a little more than three years. On that date Mr. Hill was working on his regular assignment of Report Clerk position A-49, hours 8:00 a.m. to 4:00 p.m., in Carrier's Transportation Department, Central Building, Baltimore, Maryland. A minimum lunch period of 20 minutes is provided for this position under Rule 33 of the Clerks' General Agreement.

At the December 9, 1970 Inquiry the Witnesses of Carrier testified that on the day in question Mr. Hill departed for lunch at 1:20 p.m. and returned at 2:50 p.m., a period of one hour and a half. At approximately 2:30 p.m. Mr. Hill's absence from his work area came to the attention of the Assistant Supervisor of Routes, Mr. E. C. Adams, who, thereupon, made an affirmative physical check to determine Mr. Hill's whereabouts.

Mr. Hill was not located by this physical check, however; and, as previously indicated, he did not return to his work area, according to Carriers' witnesses, until 2:50 p.m.

Contrary testimony was given by Mr. Hill in regard to his departure for and return from lunch. He testified that he departed at "approximately 20 minutes or quarter of two" to go to a nearby drug store to have lunch and to have a prescription filled. The prescription caused delay and he missed lunch. He said he returned "from lunch . . . definitely before 2:15 p.m. or around that time". Mr. Hill also stated that he was away for "approximately 35 minutes", which was not uncommonly long for a person to go across the street to order food.

In regard to his return at about 2:15 p.m., Mr. Hill indicated during his testimony that another employee, Mr. Roger T. French, Clearance Clerk, would be able to corroborate his return-time. Specifically, Mr. Hill testified that:

"I had a brief conversation with Mr. French before using the phone which I would imagine is one of the main reasons he remembers I was there."

When called to testify, however, Mr. French stated that he was not on the work premises on the day in question, because he was marked off sick and "home in bed."

In its submission in support of the claim, Petitioner advanced the following position:

1. The Carrier failed to state the charge against Claimant in the specificity contemplated in the Discipline Rule, 27.
2. The Carrier dismissed Claimant without any evidence to support its allegation.
3. The discipline assessed by Carrier was excessive, even if charges had been specific and proved.

None of these positions are supported by the record.

In regard to Petitioner's first point, Mr. Hill himself answered "yes sir" when asked if he had been properly notified of the charges.

As to Petitioner's second point the record of the December 9, 1970 investigation by the Board of Inquiry contains substantial evidence to support the Carrier's finding of guilt in respect to the charge that Mr. Hill was absent from his assigned position for an excessive amount of time on November 14, 1970. One of the well established rules of the Board in determining discipline cases is that, in judging whether the Carrier sustained its burden, the Board will not try to reconcile or choose between contradictory, conflicting testimony of opposing witnesses at the hearing. It is sufficient if the Carrier's decision was based on substantial evidence of record. These rules and criteria, applied to the record before us, preclude this Board from disturbing the Carrier's findings of guilt on the charge.

In regard to its third and last point concerning the excessiveness of the discipline assessed, Petitioner diligently presented every imaginable extenuating and mitigating circumstance in claimant's behalf. Nonetheless, in considering the record as a whole, there is no basis for this Board to relieve Mr. Hill from the disciplinary assessment which Carrier made after finding fault in the December 9, 1970 Inquiry and after taking Mr. Hill's past record into account.

There had been four Boards of Inquiry concerning Mr. Hill prior to the one dealing with the events of November 14, 1970.

1. An April 27, 1970 Board of Inquiry found Mr. Hill at fault in absenting himself from duty on April 19, 1970 without permission from proper authority. Discipline assessed was five days overhead suspension, with probation for three months.
2. An August 3, 1970 Board of Inquiry found Mr. Hill guilty of not reporting to work at starting time on July 25, 1970. Discipline was five days actual suspension.
3. Another August 3, 1970 Board of Inquiry found Mr. Hill guilty of late arrival and absence from duty without permission on July 26, 1970. No discipline was assessed.
4. A September 28, 1970 Board of Inquiry found Mr. Hill guilty of absenting himself from duty without permission on August 30, 1970. Discipline was ten days actual suspension.

By virtue of each of these Inquiries, and certainly by virtue of the Inquiries, collectively, Mr. Hill had forcible forewarning that the Carrier expected and demanded full performance of his employee obligations. Yet, despite these multiple warnings, and despite the escalation of the discipline assessments, Mr. Hill again on November 14, 1970 committed essentially the same offense on which he had been found guilty in four previous Boards of Inquiry.

This Board's prior decisions have consistently held that a Carrier's disciplinary decision will not be reversed or modified unless the Carrier is shown to have acted in an unreasonable, arbitrary, capricious, or discriminatory manner, amounting to abuse of discretion. With these criteria in mind, and after a thorough examination of the record before us, the Board finds no reason to conclude that the discipline of dismissal was too severe. There is substantial evidence to support the finding of guilt made by the December 9, 1970 Board of Inquiry. Having made this finding, we add that Mr. Hill's past record was properly considered by Carrier in determining its assessment of discipline. The Carrier scrupulously honored all of the Claimant's procedural and substantive rights in the proceedings leading up to his dismissal. On the record as a whole, therefore, it cannot be said that Carrier acted in an unreasonable, arbitrary, capricious, or discriminatory manner in assessing the discipline of dismissal.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. A. Killum  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1972.