

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19475
Docket Number CL-19346

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6937)
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of thirty days' suspension on Robert McKinley, Clerk, M. of E. Accounting Department, Wilmington, Delaware, Chesapeake Division.

(b) Claimant Robert McKinley's record be cleared of the charges brought against him on April 17, 1970.

(c) Claimant Robert McKinley be compensated for wage loss sustained during the period out of service, plus interest at 6% per annum.

OPINION OF BOARD: The record in this case discloses that Claimant held an assignment as a Clerk in the Maintenance of Equipment Accounting Department, Wilmington Heavy Repair Shops, Wilmington, Delaware. At that time, the Claimant was also a representative of the Brotherhood of Railway, Airline and Steamship Clerks holding the position of Division Chairman. On the morning of April 3, 1970, there occurred an illegal work stoppage or strike by certain shop craft employees of the Carrier represented by the Transport Workers Union of America. On this date, Carrier contends that Claimant failed to report for his regular assignment as Clerk in the Maintenance of Equipment Accounting Department. Carrier further contends that in Claimant's capacity as Division Chairman of the Clerks' Organization, he appeared in Carrier's office at Chester Freight Station and ordered the Clerks who had reported for work to leave their employment. Claimant denies this, but states that he suggested the Clerks leave their employment for their own safety. Carrier further contends that on the same date, Claimant appeared at Carrier's Passenger and Freight Office at Wilmington, Delaware, and suggested that Clerks on duty at that location should leave the premises for their own safety. Carrier's Ticket Office at Wilmington was closed for a short period of time for the reason that ticket Clerks refused to work. As a result, Claimant was notified on April 17, 1970, to attend an investigation on Friday, April 24, 1970, in connection with his responsibility for conduct hostile to the interest

of Carrier. This investigation was completed on June 30, 1970, and Claimant was assessed 30 calendar days suspension after being found guilty of the charge. The Organization contends that Claimant was not guilty of the offense charged; that Claimant was not afforded a fair and impartial investigation; and that the discipline imposed was not warranted. The Organization, in support of their contention, states that the assessment of punishment was based upon illegal, hearsay evidence, and that the investigating officers were biased for the reason that Claimant was an officer of the Clerks' Organization.

A careful study of Awards based upon similar facts compels this Board to uphold the action of Carrier in this instance. Award 11911 (Coburn) states:

"The Act's proscriptions against Carrier interference with, or coercion and intimidation of, duly authorized bargaining representatives may not be expanded to provide immunity to such representatives where, as here, it is established that an employee representative knowingly induces a fellow employee to commit an act violative of company rules. Such conduct does not fall within the orbit of those protected statutory responsibilities of bargaining representatives under the Railway Labor Act."

To hold otherwise would be tantamount to conferring upon a Union representative a carte blanche license to violate, and urge violation, of all rules under the guise of being an employee representative. Also, see Award No. 12320 (Yagoda).

This Board finds that the investigation hearing was handled in a fair and impartial manner and that the findings and punishment were not arbitrary, capricious, or excessive. Therefore, this claim will be denied.

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;

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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:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1972.