

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19592
Docket Number CL-19829

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (
(Fruit Growers Express Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7160)
that:

1. The Carrier violated the Agreement between the parties when on March 21, 1971, it dismissed Station Foreman J. C. Martin from service after failure to afford a fair and impartial hearing and based on charges not substantially proven.

2. The Carrier's action in dismissing Mr. Martin was unjust, unreasonable, arbitrary and capricious and an abuse of Carrier's discretion. The discipline assessed was too harsh and excessive.

3. Station Foreman J. C. Martin shall now be reinstated to the service of the Carrier with seniority and other rights unimpaired.

4. Station Foreman J. C. Martin shall now be compensated for all wage and other losses sustained account this summary dismissal.

5. Station Foreman J. C. Martin's record shall be cleared of all alleged charges or allegations which may have been recorded thereon as the result of the alleged violation named herein.

OPINION OF BOARD: This is a dismissal case arising under Agreement between the parties, effective April 1, 1943, as revised and supplemented. Claimant was employed as Station Foreman by the Carrier at Kearney, New Jersey, until March 21, 1971. By letter dated March 24, 1971, he was charged with improper conduct including, inter alia, the commission of acts which resulted in the impoundment of a company vehicle by the Newark, New Jersey, Police Department. Following hearing conducted on March 31, 1971, guilt on the charge was found and claimant was dismissed by letter dated April 8, 1971.

Petitioner urges that mitigating circumstances were not properly taken into account by Carrier in making the dismissal and that a procedural irregularity occurred. We find no merit in either of these points.

The claimant's own actions set in motion a chain of circumstances which resulted in the impoundment of the company vehicle. These circumstances were fully apparent in the investigation, so there is no reason to believe the Carrier did not consider possible mitigation in making its decision to dismiss.

The procedural irregularity is more serious, in that Carrier's official hearing transcript paraphrases various portions of the testimony, rather than presenting the actual words spoken by the witnesses. This is bad procedure. It could result in a cryptic version of a matter on which it is vital for this Board to know the full facts. However, Petitioner has supplied a verbatim transcript on matters which were paraphrased in the official transcript. We are therefore satisfied that the record is adequate for our review.

On the record as a whole we find the claimant received a fair and impartial hearing and that the evidence supports the Carrier's action.

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 Employee involved in this dispute are respectively Carrier and Employee 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:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1973.