

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19636
Docket Number CL-19486

Thomas L. Hayes, 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-6981)
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on Timothy Waters, Sr., Janitor-Messenger, Rose Lake Yard, East St. Louis, Illinois, Southern Region, St. Louis Division.

(b) Timothy Waters, Sr.'s record be cleared of the charges brought against him on February 16, 1970.

(c) Claimant Timothy Waters, Sr., be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained during the period out of service, plus interest at 6% annum compounded daily.

OPINION OF BOARD: By letter dated February 16, 1970 Claimant was given a notice to attend an investigation on February 20, 1970. The investigation began on that day and concluded on March 5, 1970. The notice letter received by Claimant states in part as follows:

"This is to advise you to appear in the Terminal Superintendent's office, Rose Lake Yard Office, East St. Louis, Illinois, at 2:00 P.M., Friday, February 20th, 1970, to attend an investigation to determine your responsibility, if any, in connection with unauthorized use of Company Credit Card in obtaining gasoline in a five-gallon can, which you removed from Company Property, in the trunk of your personal vehicle at approximately 10:44 P.M. on February 1st, 1970."

A similar notice was delivered to the Claimant on February 9, 1970 which he declined to accept and consequently the above mentioned letter dated February 16, 1970 was mailed to Claimant advising him to report for the investigation on February 20, 1970.

Subsequent to the investigation, Claimant was advised by Carrier's letter dated March 17, 1970 that he was dismissed from service.

The Employees contend, in effect, that the words in the notice letter do not constitute a proper or precise charge within the meaning of Rule 6-A-1 which states in part as follows:

"(a) An employe who has been in the service more than 60 calendar days or whose application has been formally approved shall not be disciplined or dismissed without a fair and impartial investigation.....

(b) An employe charged with an offense shall be given written notice in advance of the investigation of the exact offense involved. No charge shall be made that involves any matter of which the employe's immediate supervisor has had knowledge 30 calendar days or more. ...

(h) If the final decision decrees that the charges against the employe are not sustained, the record shall be cleared of the charge; if suspended or dismissed, the employe shall be reinstated and compensated for the difference between the amount he earned while out of service or while otherwise employed and the amount he would have earned had he not been suspended or dismissed."

The Board is aware of prior awards cited by the General Chairman in support of his procedural argument but we feel that a provision such as 6-A-1 requiring the Carrier to give employees advance notice of the exact charges against him does not require notice that would meet the technical requirements of a criminal complaint. As stated in Award 17998 (Quinn):

"A notice is sufficient if it meets the traditional criteria of reasonably apprising an employe of what set of facts or circumstances are under inquiry so that he will not be surprised and can prepare a defense."

The Board finds that, in the instant case, the Claimant was well aware of the matter under investigation and, as Carrier pointed out, this was evident because Claimant came to the investigation ready to defend himself with a receipt dated February 1, 1970 for the purchase of the 5 gallon can of gasoline, which receipt he obtained on February 16, 1970, by a subterfuge, that is, telling Allen Thomas, the gas station proprietor, that the judge who ordered him (Claimant) to make restitution for the gas wanted the receipt dated February 1, 1970 and not the day of payment, February 16, 1970.

In view of the foregoing, the Board feels that the procedural objection advanced by the General Chairman is without merit.

Turning our attention now to the substantive aspects of the Petitioner's claim, we note first that the Claimant Timothy Waters, Sr. went to work for the Carrier (former Pennsylvania Railroad) on July 14, 1941.

On said February 1, 1970, Claimant stopped at the service station of one Allen Thomas where he filled the gas tank of a truck owned by Carrier as well as a five gallon can with gasoline. When he got back to Rose Lake Yard, Claimant took the five gallon can from Carrier's truck and put it in the trunk of his own car. After work, he departed from Carrier's property and was arrested by Company police officers with the assistance of the Fairmont City Police.

A notation on the invoice received by the Carrier from the Thomas garage for the gasoline purchased by Claimant on February 1, 1970 indicates that the \$7.30 purchase included the 5 gallon can of gasoline.

While the Claimant claims he personally paid for the can of gasoline on February 1, the record persuades us that he paid for the gas on February 16, 1970 as a means of making restitution.

The Board is convinced that Timothy Waters, Sr. was guilty of the offense under investigation and that Carrier was justified in disciplining him.

In view of the long service of the Claimant, we have given careful consideration to the matter of whether the discipline imposed was commensurate with the gravity of the offense. Although the amount stolen, \$2.19 worth of gas, was small, any dishonesty on the part of an employee is a serious offense.

In the light of all the circumstances, the Board feels that Claimant should not be compensated for wage loss sustained during the period out of service but that it would be excessive discipline not to restore him to service with seniority and other rights unimpaired.

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

Claims (a) and (b) are denied. Claim (c) is sustained to the extent and in the manner set forth in the Opinion of the Board by reason of the alteration of the measure of discipline, as set forth in said Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.