

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19746
Docket Number SG-19700

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(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 General Committee of the Brotherhood of Railroad Signalmen on the Penn Central Transportation Company (former New York Central Railroad Company-Lines West of Buffalo) that:

(a) Carrier, in a unilateral and arbitrary act as the result of an improper hearing conducted on March 12, 1971, in violation of Discipline Rule 51 (a) of the current working agreement, notified Signal Mechanic R. Breedlove in a letter dated March 25, 1971 that he was being permanently removed from service effective 3:30 P.M., March 1, 1971, which was the date and time he was suspended from service pending and prior to the time that the improper hearing was held.

(b) Carrier should now be required to restore Signal Mechanic R. Breedlove to service with all his rights unimpaired and compensate him for all time lost at his respective rate of pay beginning March 2, 1971, inclusive, and continuing until he is restored to service, due to the improper hearing and the violation of Agreement referred to in (a) above.

OPINION OF BOARD: Claimant, a Signal Mechanic, was dismissed from service following an investigation held on March 12, 1971, for "the unauthorized removal and disposal of company material".

Petitioner contends that Claimant should not have been suspended and that the charge against him was not precise in accordance with Rule 51(a) which provides, inter alia, that "At a reasonable time prior to the hearing he shall be apprised in writing of the precise charge against him".

First, with respect to the argument on the suspension, it should be noted that this matter was not raised on the property. In numerous awards, over a long period of time, we have consistently held that charges or arguments which were not raised on the property cannot be considered by the Board; for this reason we will not consider the suspension issue.

The charge against Claimant reads as follows:

"You are hereby notified to attend a formal investigation concerning the unauthorized removal and disposal of a company owned chain saw at Middletown, Ohio, on or about February 2, 1971.

"The investigation will be held in the office of Engineer, C&S Maintenance, at 31 East Georgia Street, Room 430, Indianapolis, Indiana, at 9:30 A.M. on Friday, March 12, 1971.

In accordance with the Rules of your Agreement, you have the right to be represented by one or more representatives of your own choice, if you desire, at no expense to the company."

It should also be noted that four days prior to the letter above, Claimant received the following letter from Carrier:

"Notification is hereby given that you are held out of service beginning 3:30 P.M. March 1, 1971, in connection with the unauthorized removal and disposal of a Company chain saw at Middletown, Ohio, on or about February 2, 1971.

You will be advised subsequently whether you will be charged and, if so, the specific charge or charges on which you will be tried."

An examination of the transcript indicates that Claimant and his representatives understood from the notice what the incident was which was the basis of the charge. Rules, such as 51(a) in this Agreement are designed to protect employees from capricious investigations and to afford them a reasonable opportunity to prepare a defense; they are not designed to afford employees a technical basis for avoidance of discipline. In Award 13447 we said:

"A notice which does not clearly charge cannot be said to be precise. We do not mean that the accused must be told in detail which action or non-action is the subject of the charge, but he must be informed in a general way so that he or any reasonable person would know the nature of the charge."

In this case Claimant was not deceived or taken by surprise; his rights were not impaired by the notification he received (See Awards 12738, 16344, 17154, 17163 and many others).

Petitioner raised a series of procedural questions during the investigatory hearing, relating to the availability of witnesses and the nature of the testimony presented. We find these contentions to be without merit. The transcript shows that there was substantial credible evidence to support Carrier's conclusion; the decision that Claimant was guilty was neither arbitrary nor capricious, and the penalty imposed was not unreasonable.

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. Killen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1973.