

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19877
Docket Number CL-19720

Benjamin Rubenstein, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-7073)
that:

1) Carrier violated the Clerks' Rules Agreement when it held employee L. R. Grubb out of service from November 13, 1970 to December 1, 1970 pending the decision rendered on the investigation held November 24, 1970.

2) Carrier further violated the Clerks' Rules Agreement when it failed to notify employee L. R. Grubb in writing of a precise charge and the finding of him guilty and suspending him from service for 30 days from December 2, 1970 to January 1, 1971 was wholly unfair and unreasonable and it was not supported by the record; therefore the disciplinary action taken was without proper cause and such action was arbitrary, capricious, unfair and unreasonable.

3) Carrier shall be required to clear the record of employee L. R. Grubb and compensate him for all time lost.

4) Carrier shall compensate employee L. R. Grubb six percent per annum on all sums due and withheld as result of this violative action.

OPINION OF BOARD: In the morning of November 13, 1970, Claimant L. R. Grubb, was required to vacate his assignment and leave the property of Carrier, on account of allegedly being under the influence of intoxicants. On November 17, 1970 he was given written notice to report November 24 for investigation "to develop all facts and circumstances in connection with your allegedly being under the influence of alcohol at about 4:30 a.m., November 13, 1970 **." Following the investigation, a letter of December 2, 1970 addressed to Mr. Grubb advised him that he was suspended from service for 30 days from December 2, 1970 to January 1, 1971, inclusive.

Petitioner contends, that the investigation could have been held earlier than November 24 and that Carrier, having suspended him, from November 13 to November 24, an 11-day period, was in violation of Rule 22 - Discipline and Grievances, inasmuch as the rule provides that investigations will be held prior to the time employees are held from service, when it is possible to do so. He

contends that it was possible to hold the investigation sooner, but has offered no proof to support such contention. We find that Carrier complied with the requirements of Rule 22.

Petitioner further claims that there would have been no danger in allowing Claimant to continue working until the investigation was held and a decision rendered thereon. This issue is not within the province of this Board's jurisdiction. Finding no rule to support this contention, we dismiss it.

Petitioner next contends that the notice was deficient in that it failed to contain a precise charge. We rule that the charge, date and time specified in the notice of November 17, 1970 ("allegedly being under the influence of alcohol at about 4:30 a.m. November 13, 1970") was specific and did apprise Claimant of the reason for the investigation. The transcript of the investigation reveals that upon being asked "Did you receive notice of this investigation and its purpose thereof?" Mr. Grubb answered "Yes, sir". He also stated that he was ready to proceed with the investigation. Accordingly, Petitioner's contention in this respect cannot be entertained by the Board, and it is dismissed.

Petitioner next submits that Carrier's finding the Claimant guilty of the charge and assessing a 30-day suspension from service was unreasonable and not supported by the record and, therefore, such action was capricious, unfair and unreasonable. A careful review of the transcript leads us to conclude that the witnesses called by Carrier - two Trainmasters, Assistant Agent and Assistant Trainmaster - all of whom personally knew the Claimant, each attested he had observed Claimant's unusual and abnormal conduct, unsteadiness in walking, that he talked very loud and his speech was slurred. The Trainmasters found a half pint bottle bearing a vodka label in Claimant's car, which was half empty. An analysis of the contents of the bottle made by a Laboratory confirmed that the bottle contained vodka.

It has been consistently held in Awards of this Board that where Carrier has produced substantial evidence and has acted on such evidence in a manner consistent therewith, without a showing of abuse of discretion, we will not substitute our judgment for that of the Carrier, nor disturb its imposition of discipline - if it is consistent with the offense committed. Based on all the facts of record in this dispute, we will deny the claim.

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:

A. W. Paulos
Executive Secretary

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