

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19965
Docket Number SG-19641

C. Robert Roadley, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 violated the current agreement covering Foremen, Inspectors and Technicians, dated February 15, 1961, as amended, particularly Rule 19, when it disciplined Signal Foreman R. Breedlove without holding a proper hearing preceded by the filing of specific charges against him.

(b) Carrier also violated Rule 11 when Mr. Canfield disqualified Mr. Breedlove more than 90 days after he had been assigned to a Signal Foreman position.

(c) Carrier should be required to restore Mr. Breedlove to his former position of Signal Foreman with all rights and privileges, compensate him at the Signal Foreman rate of pay for all time held out of service as a result of Mr. J. J. Canfield's letter of October 12, 1970, and compensate him at the Signal Foreman rate of pay for all time he is required to work a lower rated position.

(d) Carrier should also be required to compensate Mr. Breedlove for any time spent traveling to and attending the October 1, 1970 hearing, and reimburse him for any travel or other expenses incurred by him in connection with this matter, including any living and traveling expenses he incurs because of being required to work a lower rated position.

(e) Carrier should also pay Mr. Breedlove interest on any money due under this claim at the rate of 1½% per month, compounded monthly, commencing on the first day of the month following the month in which the compensation would have been earned or the expenses incurred.

OPINION OF BOARD: The primary question presented to this Board is whether the Claimant was afforded a proper hearing preceded by the filing of specific charges against him, as referred to in Rule 19 of the Agreement; secondly, whether Claimant was improperly disqualified under the provisions of Rule 11, of the Agreement.

Under the date of September 23, 1970 the Carrier transmitted a letter to the Claimant reading as follows:

"Arrange to attend a hearing to be held to develop the facts to determine your responsibility if any in connection with the following, in the performance of your duties on September 22nd, 1970.

1. Absent from duty without permission.
2. Leaving the area in which you were working in an unsafe condition.
3. Unauthorized use of company truck while absent from duty.

This hearing will be held at 7710 Reading Road, Cincinnati, Ohio, office of Supervisor C&S, at 9:00 A.M. on October 1st., 1970.

You have the right to be represented by one or more representatives of your own choice, if you so desire, at no expense to the company."

It is obvious that the above quoted letter to Claimant sets forth the date of the incident under investigation, the subject of the investigation, the location and time of the investigation, the purpose of the investigation, notification to Claimant of his right to have representatives of his own choosing present, and that the letter was timely transmitted. This Board has held on numerous occasions that notifications similar to the above do not violate an employee's substantive rights and are sufficiently distinct to fully acquaint an employee of the subject matter of the investigation so that he could properly prepare his defense. See Awards 13751, 14581, 16065 and many others.

We subscribe, in this case, to the principles set forth in prior Awards of this Division regarding the foregoing and therefore find that the Claimant was properly charged; that the hearing was properly held and was conducted in a fair and impartial manner.

Additionally, it is clear from a thorough review of the transcript of the hearing that Claimant did, in fact, absent himself from duty without proper authority. There is substantial evidence in the record to sustain a finding of guilty.

On the matter of discipline, Petitioner has cited Rule 11, of the Agreement and stated, "There is absolutely nothing in Rule 11, or any other rule of the Agreement, which states or even implies that a demotion may be made as a disciplinary measure." While it is true that the foregoing statement is accurate it is also true that nothing in Rule 11 pertains to the matter of discipline, or restricts the Carrier's right to assess discipline. It would appear that Rule 11 has no bearing at all in considering the claim before us.

Simply stated, the Claimant, as the result of a proper hearing under the provisions of Rule 19, was found guilty of being absent from duty without permission, leaving his work area in an unsafe condition, and using company equipment without authority for which he was disciplined by being suspended for ten (10) days and disqualified in all classes above Signal Mechanic, ".....until such time you prove you are capable of handling men." We do not find that the discipline assessed was an abuse of the Carrier's discretionary authority.

We are persuaded by the reasoning in many prior Awards that the matter of assessing discipline is within the discretion of the Carrier.

Award No. 16073 stated, in part:

"..... the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier, and we are not warranted in disturbing the penalty imposed unless we can say that it clearly appears that the action of the Carrier with respect thereto was so unjust, unreasonable or arbitrary as to constitute an abuse of that discretion."

For the reasons stated herein 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;

Award Number 19965
Docket Number SG-19641

Page 4

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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1973.