

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20092
Docket Number CL-20223

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline & Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company (Lake Region)

STATEMENT OF CLAIM: Claim of System Board of Adjustment No. 218 (GL-7317) on
the Lake Region, Norfolk and Western Railway Company, that:

1. Carrier violated the Agreement between the parties when on October 11, 1972, they arbitrarily and capriciously assessed Clerk G. G. Karamanos ten (10) days actual suspension.

2. The carrier's action was unjust, unreasonable and an abuse of carrier's discretion. The discipline was assessed without any proof whatever of the charges made.

3. Carrier shall now compensate G. G. Karamanos for each day held out of service, plus two hours and twenty minutes punitive rate for time spent attending hearing, with seniority and all other rights unimpaired.

4. In addition to the money amounts claimed herein, carrier shall pay claimant an additional amount of eight percent (8%) interest compounded annually.

OPINION OF BOARD: Claimant was Third Shift Messenger at Carrier's Bison Yard at Buffalo, New York, working from 11:00 P.M. to 7:00 A.M. He was assessed a ten day suspension for coming to work late and being insubordinate, following an investigation.

Carrier's witnesses at the investigation testified that Claimant had arrived at his work station in the Bison Yard at between 11:10 and 11:15 P.M. Claimant denied that he was late claiming to have been in the Yard itself at 11:00 P.M. At the investigation the issue of the place to which employee was to report was raised by Petitioner and never resolved, leaving the issue of the tardiness in doubt. The record contains unrefuted testimony by a Carrier supervisor that Claimant used abusive language to him immediately upon being relieved for the alleged tardiness. Additionally, there is at least the implicit admission of tardiness by Claimant in the testimony that he said he was late for "personal reasons", reported by two Carrier witnesses. The Organization argues that the statements by Claimant to his supervisor were made after he was relieved from duty and hence are not relevant to any disciplinary action. We do not agree. Comments to a supervisor within moments of a disciplinary action on company premises are clearly within the province of the normal employee-supervisor relationship, and may be censured. Based on the record there

is sufficient evidence to justify Carrier's finding of guilt on the insubordination charge in the use of abusive language by Claimant, but as indicated above, at least some doubt as to the charge of tardiness.

We are seriously concerned with the conduct of the investigation in this case. The hearing officer's actions significantly prejudiced Claimant's right to a fair and impartial investigation. The actions we question include the following:

1. The hearing officer injected two new issues into the investigation which had not been part of the charge: refusal to sign the notice of investigation and an anonymous threatening phone call.
2. The hearing officer persistently lead Carrier's witnesses in a manner indicative of a least pre-judgment. For example the hearing officer in questioning a Carrier witness said: " Mr. Meade do you feel that Mr. Karamanos as a result of this alleged altercation was boisterous, insubordinate, uncivil, rude or immoral?"
3. The hearing officer, without apparent basis, attributed reluctance to attend the investigation and reluctance to answer a particular question to Claimant at the outset of the investigation.
4. The hearing officer did not permit cross examination of Carrier witnesses until all of them had testified.
5. The hearing officer instructed Claimant's representative to stop cross-examining one of Carrier's witnesses stating among other things: "You are doing nothing but questioning the integrity of this supervisor."

On innumerable occasions we have discussed the importance of the integrity of the investigation of alleged infractions. The nature of the disciplinary process itself dictates the need for objectivity and fairness on the part of the hearing officer. The Board cannot condone manifest bias as exhibited by the record of this investigation. Although the procedural irregularities approach the point where the Carrier's discipline might be set aside for lack of due process, we choose instead, under all the circumstances of this particular case, to reduce the discipline imposed (see Award 19591). Accordingly we shall sustain the finding of guilt but reduce the penalty to a ten day record suspension. Claimant shall be made whole for the time lost, but not including pay for time spent at the hearing which is not provided for in the Agreement. Further we shall not allow interest since it also is not provided for in the Agreement and also was not handled on the property.

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 violated in accordance with the Opinion.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1974.