

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20153
Docket Number SG-19740

Dana E. Eischen, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(The Ann Arbor Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood
of Railroad Signalmen on the Ann Arbor Railroad
Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 54(a), when it disciplined Signalman R. L. Beracy on December 1, 1970, without an investigation.

(b) Carrier should now be required to compensate Mr. Beracy at his pro rata rate of pay for the time he was denied the right to work after reporting for duty on December 1, 1970 (three hours and fifty-five minutes).

OPINION OF BOARD: The Claimant, R. L. Beracy, was regularly assigned as Signalman on the Signal Gang under the direction of Foreman B. F. Johnson, working away from headquarters at Toledo, Ohio, with tour of duty 7:30 A.M. to 4:30 P.M., and a one-hour lunch period from 11:30 A.M. to 12:30 P.M.

On December 1, 1970 Claimant reported for duty between 12:30 and 1:00 P.M., some five hours after his assigned starting time. Claimant informed the foreman that he was late reporting because he had been sleeping. Foreman Johnson advised Claimant that due to his failure to report for the regular tour and failure to notify the foreman that he would be late, the day's work had been rescheduled on the assumption that he would be absent for the entire tour of duty. Accordingly Claimant was advised that he would not be permitted to work the remainder of the day.

Employees contend that by this action Carrier "suspended" Claimant without an investigation in violation of Rule 54(a) of the Agreement, which reads as follows:

"An employe who has been in the service more than sixty (60) days or whose application has been formally approved, shall not be disciplined or dismissed from the service without first being given an investigation."

Employees rely heavily for support of their position upon prior Award No. 7210 of the Third Division of the Board; and upon the premise that Claimant was subjected to the equivalent of "double jeopardy" for his tardiness on December 1, 1970. This latter contention is based on the fact that on December 18, 1970, Carrier held an investigation into Claimant's alleged "absence without permission on September 30, November 6, 9, 19 and 20, and December 1, 1970 and his failure to notify his direct supervisor regarding absence on these dates." Subsequently, Carrier assessed discipline of one (1) day suspension for absence on the above dates. In this connection, Employees maintain that Claimant was "disciplined" twice for tardiness on December 1, 1970 -- once before the investigation and again after it.

It is readily apparent from the record that Claimant has not directly appealed the disciplinary action assessed after investigation on December 18, 1970 and cannot be permitted to do so indirectly via the instant claim under Rule 54(a). Moreover, the merit of the double discipline assertion is questionable inasmuch as the assumption inherent therein amount to begging the question on the basic issue in this claim, viz was the action of Carrier in refusing to work Claimant on the afternoon of December 1, 1970, in the circumstances, discipline without an investigation.

Carrier maintains that Claimant was not disciplined or suspended but rather that he lost work because through his own failure to appear or notify his foreman the work was rescheduled for the day, so as to eliminate the need for his services, on the assumption that he would be absent for the entire tour of duty. In these circumstances, Carrier asserts that Award No. 7210, upon which Claimant largely bases his claim, is in fact supportive of Carrier's position and not that of the Employees.

A close reading of Award No. 7210 shows that the sustaining award therein was premised exclusively on our view that Carrier in that case had refused to work the claimant not because of impracticability or impossibility but rather as punishment for a series of instances of lateness. Such is not the case in the instant claim.

The facts and circumstances of the instant claim present the reverse situation of that claim sustained in Award No. 7210, and warrant a different result. It appears from the record as a whole that Claimant was kept from working on the afternoon December 1, 1970 because it was impracticable under the particular circumstances of the rescheduled work load, which was in turn necessitated by his five-hour late arrival and lack of notification. We conclude, therefore, that under the particular circumstances of this case, Carrier's action did not constitute discipline without an investigation.

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:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1974.