

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20160
Docket Number CL-20205

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
PARTIES TO DISPUTE: (
(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7284) that:

(1) The Carrier violated the Agreement when it improperly withheld Mail Department Employee, Mr. D. C. Poole, from service for an indefinite time following an investigation on charges that were not precise, and not proven.

(2) Claimant was withheld from service as a result of decision that was vague and same as "no decision" contrary to the requirements imposed by the investigative Rules of the Agreement.

(3) The "Pseudo" decision of indefinite suspension was based upon pre-judgement of guilt; therefore arbitrary and an abuse of power.

(4) The Carrier be required to exonerate Claimant Poole, clear his record and pay him for all time lost from the date he was suspended from service (January 14, 1972) to the date the Carrier withdrew the suspension restoring him to duty, less time actually unavailable due to physical disability.

OPINION OF BOARD: Claimant, a mail handler, was suspended by letter dated January 14, 1972, which stated:

"Please report for formal investigation to determine if you are in possible violation of Rules 'E', 'L' and 'M' of the Kansas City Terminal Rules and Regulations.

It was reported in the newspaper, Kansas City Star, Thursday January 13, 1972 that you have been arrested and arraigned in the Magistrate Court of Charles Stitt on First degree robbery charges in connection with a robbery at 5701 Paseo on January 6, 1972. Newspaper further states that you have posted a \$2500 bond and the preliminary hearing is scheduled for Tuesday....."

A formal investigatory hearing was held on February 4, 1972 and Claimant received the following letter dated February 17, 1972:

"Please refer to formal investigation conducted in Room 152-A, February 4, 1972, to determine if you were in violation of Kansas City Terminal Rules and Regulations when, as reported in the Kansas City Star newspaper on January 13, 1972, that you were arrested and arraigned in the Magistrates Court on a first degree robbery charge, and that you had posted a \$2500.00 bond.

As a result of this investigation it has been determined that you are guilty of rules violation as charged, and you are hereby suspended from the service of the Kansas City Terminal Railway Company pending final determination of the robbery charge."

The pertinent Rules cited by Carrier are as follows:

- "E. Employees must rendered every assistance in their power in carrying out the rules and Special Instructions and must report promptly to the proper officials any violation. They are required to report any misconduct, negligence or incidents affecting the interest of the Company. Withholding such information shall be sufficient cause for dismissal."
- "L. Employees who are careless of the safety of themselves or of others or who are insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or handle their personal obligations in such a way that the railroad will be subjected to criticism and loss of goodwill, will not be retained in the service."
- "M. Safety is of first importance in the discharge of duty. Obedience to the rules is essential to safety. To enter or remain in the service is an assurance of willingness to obey the rules."

Petitioner first argues that the charge quoted above was not precise and thus did not conform to the requirements of Rule 20, since the nature of the alleged violations of Rules E, L, and M were not disclosed. Carrier repeatedly argues that this issue cannot be considered by the Board since it was not timely raised at the investigation. Carrier is obviously in error, it was raised at the hearing, and the issue is properly before us. The issue will be considered in the context of the entire investigation.

Carrier received notice dated August 18, 1972, from the Clerk of the Circuit Court, that the robbery charge against Claimant had been dismissed. Due in large part to Claimant's being ill, he was reinstated on October 1, 1972, but without back pay. He resigned from employment on October 12, 1972.

Petitioner's arguments may be summarized as follows: the charge was not precise; Carrier failed to sustain its burden of proof at the investigation; Carrier's decision was based on the newspaper story and the presumption of Claimant's guilt of the robbery charge; and finally the decision was indeterminate and in violation of Rule 19 of the Agreement which provides that decisions must be rendered within fifteen days.

Carrier argues, inter alia, that the investigation contained substantial evidence to support the conclusion of guilt and the outcome of the criminal court proceedings is not determinative in cases of this type. Carrier further states that the decision was not indeterminate but ended automatically when the criminal charges were finally determined. We certainly concur in the argument that acquittal by a court is not a bar to disciplinary action by the Carrier, and is in fact irrelevant; this position has been expressed in many Awards (Awards 13116, 12322, 15577 among others). Carrier emphasizes its needs to protect the public, its employees and its property and cites the severity of the criminal charge as a proper basis for its conclusion to suspend Claimant. Carrier cites a prior related factual situation on its property and Awards (Award 18536 and Second Division Award 5360) to support the right to hold Claimant out of service pending completion of the criminal proceeding. We note that in the situations cited there was either a postponement or rescheduling of the investigation pending the outcome of the court case; this was not so in this matter, since the investigation was completed and a finding of guilt reached.

Without dealing with all the arguments raised, the crux of this dispute lies in whether or not there was substantial evidence to support Carrier's finding. Not only was the charge at best vague, but we find that there was absolutely no probative evidence to support the Carrier's finding. As an example, Carrier found that Claimant had been arrested, while the evidence in the record as well as the newspaper story does not support this conclusion. Had Carrier postponed the conclusion of the investigation pending the outcome of the court proceeding as had been done in the previous case cited, our conclusion might well have been different. In this matter, however, we find that Carrier has not met its burden of proof obligation and hence the Claim must be sustained. Since Claimant is no longer an

employee of the Carrier the remedy in this matter is simply that of back pay. We shall provide for payment for time lost, in accordance with Rule 24, for the period beginning with February 17, 1972, the date of Carrier's decision finding Claimant guilty, till August 18, 1972, the date of the dismissal of the robbery charge.

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.

A W A R D

Claimant shall be made whole in accordance with Rule 24 for the period from February 17, 1972 to August 18, 1972.

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.

LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT
TO AWARD 20160 (CL-20205)
(Referee Lieberman)

The Dissenters state that "Carrier did not find Claimant guilty of the robbery charge. Rather, Carrier found Claimant guilty of being arrested on a robbery charge and posting \$2500.00 bail."

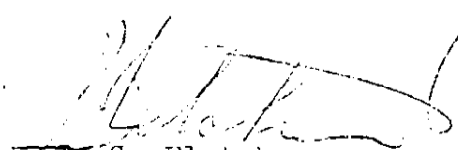
This Award properly holds that "the evidence in the record as well as the newspaper story does not support this conclusion" that he had been arrested but, rather, the article stated he had been arraigned; that, following arraignment, he had posted bond so as not to be detained in jail.

Carrier cited no rules alleged to have been violated by Claimant being arraigned and posting bond.

Neither did the newspaper article make mention of Claimant's employer, therefore, no adverse publicity ensued.

The Award is correct in holding that the provisions of Rule 19 require a decision be made within fifteen days and that, in this dispute, no decision had been made within that time limit.

The Dissent does not detract from the sound reasoning of this Award and the citation of precedent Awards in support thereof.


J. C. Fletcher
Labor Member
3-28-74