

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20307
Docket Number CL-20475

Frederick R. Blackwell, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7458) that:

1. Carrier violated the Agreement between the parties when on May 2, 1973, it conducted a formal investigation and, subsequently, without just cause dismissed Telegrapher Robert Wheeler from service of the Carrier on May 11, 1973.

2. As a consequence Carrier shall:

(a) Clear the service record of Telegrapher Robert Wheeler of the charge and any reference in connection therewith.

(b) Promptly restore Telegrapher Robert Wheeler to duty with seniority, vacation and other rights unimpaired.

(c) Pay Telegrapher Robert Wheeler the amount of wages he would have earned absent the violative act, less outside earnings.

(d) Pay Telegrapher Robert Wheeler any amount he incurred for medical or surgical expenses for himself or dependents to the extent that such payments would have been paid by Travelers Insurance Company under Group Policy No. GA-23000 and, in the event of the death of Telegrapher Robert Wheeler pay his estate the amount of life insurance provided for under said policy. In addition, reimburse him for premium payments he may have made in the purchase of substitute health, welfare and life insurance.

(e) Pay Telegrapher Robert Wheeler interest at the statutory rate for the State of Ohio for any amounts due under (c) hereof.

OPINION OF BOARD: This is a discipline case in which the Petitioner seeks to have the discipline of dismissal vacated on the grounds that: (1) the hearing was not timely held; and (2) the hearing evidence does not support the dismissal action.

The charge against the Claimant, as stated in the Carrier's notice of charge dated April 12, 1973, reads as follows:

"You are hereby charged with engaging in unlawful activities for which you were arrested on March 23, 1973 and charged with possession of hallucinogens for sale and confined in Lucas County Jail, Toledo, Ohio, causing you to be absent from your assignment without authority from March 23, 1973 to April 5, 1973.

Arrange to report to the Trainmaster's Office, Montpelier, Ohio at 9 a.m. (cst), Thursday, April 19, 1973 for an investigation to be conducted in connection with the charges set forth above."

The pertinent rule of the agreement reads as follows:

"RULE 27 - DISCIPLINE - INVESTIGATION

* * * * *

(b) An employe charged with an offense shall be apprised in writing of the specific charge or charges against him at the time charge is made, and will have reasonable opportunity to secure the presence of necessary witnesses and representatives. The investigation and hearing will be held within ten calendar days from date charged with the offense or held out of service, and a decision will be rendered within ten calendar days after completion of the investigation and hearing. A record of the investigation and hearing will be made and a copy of this record will be furnished the employe or his representative upon request." (Emphasis added)

The Petitioner's argument on lack of timely hearing arises from the Carrier's postponement of the hearing from April 19, 1973 to May 2, 1973. This change in hearing dates caused the hearing to occur more than ten days after the Claimant was charged on April 12 and, hence, the change, on its face, appears not to conform with Rule 27(b). However, in his hearing testimony, the Claimant stated that: "...I was detained in jail and a postponement had been requested..." Also, without contradiction, two Carrier witnesses made reference to a postponement having been requested in Claimant's behalf by his brother. Thus, the record affirmatively shows that Claimant, or someone acting in his behalf, sought a hearing postponement and, therefore, we find no merit in the post-hearing protest about untimeliness of hearing.

The Petitioner's attack on the hearing evidence is also without merit. The Claimant admitted his absence from duty, as alleged in the charge, and also admitted that he did not personally receive permission for the absence from a supervisor. He said, however, that permission had been obtained through an unidentified person who called Carrier on his behalf on March 23 and also that permission had been requested by his brother in a talk with the Trainmaster. The Carrier employee who received the call from the unidentified person stated that, while the person had requested permission as averred by the Claimant, the call was within one hour of Claimant's reporting time; consequently, the person was told that permission to be absent could not be granted. The Trainmaster stated that the Claimant's brother had spoken to him about the postponement of hearing, but not about being off from work. In this state of the record, we conclude that Carrier's action is supported by substantial evidence of record and, accordingly, the Carrier's discipline should not be disturbed. We shall 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;

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 June 1974.