

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20331  
Docket Number CL-20195

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employees  
( George P. Baker, Richard C. Bond, and Jervis Langdon, Jr.,  
( Trustees of the Property of Penn Central Transportation  
( Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7292)  
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on E. R. Draper, Crew Dispatcher, Collinwood Yard, Cleveland, Ohio, Western Region.

(b) Claimant E. R. Draper's record be cleared of the charges brought against him on March 9, 1972.

(c) Claimant E. R. Draper be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained during the period out of service, plus interest at 6% per annum compounded daily.

OPINION OF BOARD: Claimant, a regularly scheduled crew dispatcher on the 7:00 a.m. to 3:00 p.m. shift at Carrier's Collinwood Yard, was held out of service on March 8, 1972 and dismissed from service effective March 27, 1972 following an investigative hearing into an occurrence of March 5, 1972. The essential facts out of which the instant claim arose are not in serious dispute.

On Sunday, March 5, 1972, Claimant reported for his regularly scheduled assignment at 7:00 a.m. In addition to his regular assignment he was scheduled also to work the second trick from 3:00 p.m. to 11:00 p.m. By his own admission, Claimant was under the influence of an alcoholic beverage while on duty on the day in question. Unrefuted testimony of the other crew dispatcher on duty March 5, 1972 shows that Claimant when he reported for the first trick exuded an alcoholic aroma, was unable to perform his work and, accordingly, did not commence his assignment until 11:30 a.m. Moreover, Claimant was in possession of two revolvers which he admitted discharging while on duty during his second trick between 3:00 and 11:00 p.m. This occurrence was reported to the Penn Central Police Department whose officers investigated the incident.

Claimant subsequently was held out of service and served with a Notice of Trial or Investigation to be held on March 13, 1972 in connection with the following:

"Failure to properly perform your duties as Crew Dispatcher on job G-23 on Sunday, March 5, 1972 whereby you failed to conduct yourself in such a manner as not to bring discredit upon the Company, acting with hostility and disregard for Company interest and consumed and had in your possession alcoholic beverage while on duty as Crew Dispatcher."

The record shows that Claimant attended the investigation on March 13, 1972 and was accompanied by a representative of the Organization, Petitioner herein. At the hearing, Claimant asserted the adequacy of the notice and opportunity to be heard, and forthwith stated on the record that he wished to "plead no contest" to the specifications listed in the Notice of Trial or Investigation. After affirmatively admitting the details in connection with the discharge of firearms and influence of alcohol occurrence on March 5, 1972, Claimant through his representative urged Carrier to consider his prior good service record in assessing his liability.

On March 27, 1972 Claimant was advised of his dismissal from service for the offenses occurring March 5, 1972. Subsequent appeals to Carrier for change in the discipline assessed were denied and the claim ultimately was appealed to our Board.

Petitioner contends that Claimant was effectively denied procedural due process on the grounds that the Notice of Trial or Investigation was confusing and imprecise and that the investigation was improperly denominated a "trial" at its outset and later correctly labeled an "investigation" by the hearing officer. Moreover, Petitioner maintains that even if arguendo the investigative hearing was procedurally sound and fairly conducted the assessment of discharge in this case was excessive, unreasonable and an abuse of discretion by Carrier.

Carrier on the other hand urges that the record shows adequate notice, procedural regularity and full compliance with due process. Moreover, Carrier points out that Claimant has admitted on the record serious infractions of rules regulating safe and proper conduct while on duty. In these circumstances Carrier maintains that its decision to discharge Claimant can not be construed as an unreasonable exercise of its undoubted authority to discipline employees for offenses while on duty.

Careful analysis of the record reveals that the Notice was sufficiently explicit to advise Claimant of the subject of the investigation and that his conduct was the focus of investigative inquiry. There is nothing in the record to suggest that Claimant was in any manner misled or prejudiced in his defense by the form of notice. In our judgment the Notice complies with the requirements of Rule 6-A-1 of the Agreement between the parties that an employee be given "written notice in advance of the investigation of the exact offense charged".

Nor can Claimant find comfort in the Petitioner's allegation of procedural irregularity incident to the hearing officer's initial denomination of the hearing on the property as a "trial". The record shows that almost immediately upon entering the prior reference in the record, the hearing officer corrected himself and the record retrospectively by properly captioning that hearing as an "investigation". This is not to say that Petitioner is incorrect in asserting that there is more than a mere semantic difference between a "trial" and an "investigation" and that the proper procedure on the property is the latter. However, in looking beyond the form to the substance of the instant proceedings the Petitioner here attacks, we find that aside from the initial mislabeling the hearing was conducted as a fair and impartial investigation, consistent with the requirements of the Agreement.

Petitioner urges that the ultimate penalty of dismissal was unreasonably excessive and that a lesser penalty is indicated from the record. We have noted Claimant's apparently unblemished record prior to the instant offense. However, the record shows that Carrier's findings are supported by substantial evidence including Claimant's admissions; and that none of Claimant's procedural or substantive rights were violated. In these circumstances and considering the nature of the offenses we cannot say that Carrier acted arbitrarily, unreasonably or capriciously in assessing discharge. Therefore we find no valid basis for substituting our judgment for the disciplinary action taken by Carrier and the claim must be denied. See Awards 12438, 12738, 13674, 15574, 19433 et al.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.