NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20546
Docket Number CL-20534

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7455) that:

1. The Carrier violated the Clerks' Agreement when it dismissed Janitor R. Thornton from service effective October 9, 1972.

2. Claim that the Carrier's action was arbitrary, without just cause and an abuse of discretion.

3. Claim that Janitor Thornton was not advised of the precise charge against him as required of Rule 25 of the agreement between the parties.

4. Claim that the investigation and decision resulting therefrom dismissing him from service was therefore null and void.

5. Janitor Thornton be reinstated in the service of the Carrier, his record cleared of the charge and that he be compensated for all time lost as provided in Rule 33 of the agreement between the parties retroactive to October 9, 1972.

OPINION OF BOARD: During Claimant's regular assignment on September 17 and 18, 1972, he used a company vehicle to transport himself to the various locations where he performed his job. On completion of his tour, he made out a Vehicle Operators Report indicating that the automobile he used was in good condition. Claimant had completed his tour at 8:29 A.M. on September 18. The employe who was to use the vehicle in question between the hours of 9:30 A.M. and 6:30 P.M. on September 18 inspected the automobile and found it to be damaged. Said employe reported said damage to the Chief Clerk. The automobile was inspected and then repaired for some $230.00.

On October 3, 1972, Claimant was given written notice of an investigation to be held at 10:00 A.M. on October 6, 1972. Said notice reads as follows:

"Please arrange to report to this office at 10:00 A.M., October 6, 1972, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with damage to the left front end of Company Vehicle #A-93 used by you during your tour of duty commencing 11:59 P.M. Sept. 17, 1972, and your failure to report the damaged condition of this vehicle to your Supervisor at the completion of your tour of duty on September 18, 1972.

If you desire a representative, please arrange."

Yours truly,

/s/ H. C. Mills

Supvr. Car Operations

The Claimant alleges that said notice does not meet the requirements of Rule 25 which reads as follows:

"Rule 25 - Advice of Cause

An employe, charged with an offense, shall be furnished with a letter stating the precise charge at the time the charge is made. No charge shall be made that involves any matter of which the carrier has had knowledge of thirty (30) days or more."

We have held many times that if the notice advises the Claimant of what he is being charged in a manner sufficient to permit him to prepare a defense it falls within the definition of precise charge. The Claimant must be able to understand the subject and purpose of the investigation. The notice quoted above meets this test.

The question to be answered then is whether the record supports the finding that the Claimant was guilty of failure to abide by the Company Rules in failing to report the damage to the automobile.

We have examined the record and find it to be lacking in sufficient evidence of probative value to substantiate the charge. There is no direct evidence whatsoever linking the Claimant with the damage. The Claimant has denied that he caused the damage to the vehicle. All that was proved was that at 9:15 A.M. on September 18, 1972, the automobile was found to have been damaged to the extent of $230.00. This was some

45 minutes after Claimant returned the auto to the yard. The fact that the mileage had not changed from the time the Claimant checked in does not foreclose the possibility that the automobile could have been struck while parked. Many other possibilities exist. It is the existence of these possibilities in the absence of direct evidence that cause this Board to make its finding of insufficient evidence.

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 Employes involved in this dispute are respectively Carrier and Employes 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

Claim Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1974.