

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20571  
Docket Number SG-20352

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood  
of Railroad Signalmen on the Long Island Rail  
Road that:

Carrier pay to Signalman R. T. Nobile all time lost in  
connection with suspension of 15 calendar days, and his  
record be cleared of the charges and suspension.

OPINION OF BOARD: Claimant was accorded a fifteen day suspension for  
"Preparing and Submitting a False Daily Gang Report  
for March 24, 1972". The discipline was later reduced to a five day  
suspension by Carrier.

The investigatory hearing was held on May 2, 1972 and Petitioner first raises a series of procedural objections, all of which were raised at the hearing and subsequently. Petitioner contends that the presiding Carrier officer was prejudiced and displayed a presumption of guilt in the conduct of the hearing. The record of the hearing does not support this allegation. Petitioner next alleges that Claimant was required to testify first at the trial which was both improper and prejudicial, since Carrier was required to present a prima facie case first. We do not agree with Petitioner's conclusion since this type of hearing is an investigation not a criminal trial and there is nothing improper in calling on the Claimant to testify first or at any other time during the investigation; we have observed a number of such investigations in which the Claimant was the only witness to be called. Our conclusion, over the years, is grounded on the premises that the Carrier is required to produce substantial evidence in support of its findings - and the testimony of the Claimant may or may not be an integral part of such evidence. Petitioner further contends that Claimant was forced to testify under threat of discipline by the presiding Officer. It is true that Claimant was adjured to answer a question propounded to him or be considered to have been insubordinate. However, viewed in the context of Claimant's representative's attempts to obstruct and hamper the progress of the investigation, the conducting Officer's remark, though intemperate, did not prejudice Claimant's right to due process. Finally, Petitioner argues that the procedure was fatally deficient in that a vital witness, the MTA Auditor, was not present at the trial, to substantiate the testimony of the principle Carrier witness. We note that

the Trial Officer offered to adjourn the proceeding to arrange for this witness's appearance, but the offer was rejected by the General Chairman. We find, therefore, that the appearance of this witness was waived by Petitioner. We conclude then, that there were no fatal procedural flaws established.

With respect to the merits, Petitioner argues that charge was not proven by Carrier and that the incorrect report was not prejudicial to Carrier in any fashion, and, since there was no substantiation of any previous infraction by Claimant, at most a reprimand would have been sufficient and appropriate. Carrier points out that the gang, contrary to the erroneous report, did not return to work after lunch and, by inference, there well might have been other infractions. Our conclusion is that the record indicates that both witnesses at the investigation (including Claimant) support the conclusion of guilt determined by Carrier, and there is no contrary evidence. There is no basis for disturbing the penalty imposed by Carrier since it was neither arbitrary nor capricious.

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 Employee involved in this dispute are respectively Carrier and Employee 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. Parker  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of December 1974.