

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20675

Docket Number SG-20590

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claims of the System Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company:

(a) On or about August 10, 1972, the Carrier violated the current Signalmen's Agreement, in particular Rules 60 and 64, also past practice, when it held an investigation of J. W. Sharpe, charging his responsibility in connection with failure to properly clear train #611 when operating a motor car, and then charging him and disciplining him for violations of Rules 1000, 1001, E2 and E3 from the rules of the Engineering Department after and during the investigation.

(b) The Carrier now be required to clear Mr. Sharpe's record of the discipline, which was 30 days deferred suspension.

(Carrier's File: D-9-8-148)

OPINION OF BOARD: This is a discipline dispute in which the sole issue raised by Petitioner is the allegation that Claimant's procedural rights were violated.

Petitioner alleges that Claimant was deprived of due process on three grounds: first, he was not permitted to have two officers of the Organization represent him at the investigation contrary to the rules and past practice; second, the record of the investigation had notable omissions; and finally he was disciplined for certain rule infractions with which he was not originally charged.

The second allegation of Petitioner apparently refers to the lack of completeness of the transcript in the omission of certain "off the record" conversations at the investigation. We do not find any evidence to support the contention that such conversations should properly have been recorded or that there was prejudice in the transcription process. We find no merit in this allegation.

With respect to the third allegation, an examination of the record reveals that Claimant was disciplined precisely for the transgression set forth in the original charge. We find no evidentiary support whatever for Petitioner's contention in this area.

The matter of proper representation at the hearing received most of the Organization's attention in its arguments. The relevant rule provides as follows:

"Rule 60. An employe who has been in service more than sixty calendar days will not be disciplined or dismissed without investigation, at which investigation he may be assisted by an officer of the Brotherhood of Railroad Signalmen of America or a fellow Signal Department employe of his choice. Such investigation will be conducted by a supervising officer of the Signal Department....

The employes or their representatives may ask questions of witnesses having a bearing on the case, and such evidence will be made a part of the record...."

Carrier, arguing that the Petitioner's position is invalid, indicates that the first sentence of the Rule above is perfectly clear and guarantees Claimant only a single representative. Carrier denies the existence of a practice supporting the Organization's position and further since the rule is unambiguous Carrier states that the rule is not subject to being changed by the alleged practice. Finally, Carrier contends that procedural errors, unless prejudicial in the particular circumstances, cannot serve as the basis for upsetting discipline, which is reasonable, for a clearly established offense.

Petitioner, in the handling on the property, furnished examples of five previous recent investigations in which it was permitted to have more than one representative for claimants, and it alleged there were at least twenty five other instances which would be furnished upon request. The Organization points to the Carrier officer having an assistant during the investigative hearing and refusing to accord the same privilege to Claimant in spite of the parallel language in Rule 60. Although it does not contest the specific penalty as being improper in this case, Petitioner alleges that the case might have turned out differently had Claimant been permitted to have the General Chairman as his second representative.

The record of the investigation of this case clearly establishes Claimant's guilt. A study of the transcript makes it perfectly evident that the ultimate result would not change, regardless of the conduct of the investigation in this case. However, we are concerned with the process of discipline and the bearing of the issue raised by the Petitioner herein. It is also evident that the Carrier in this case did not accord Claimant the same right which it accorded itself; the right to have more than one representative. The language of Rule 60 is far from unambiguous

if the second paragraph is considered; however it affects Carrier's right to have more than one officer conducting the investigation in the same fashion as it relates to Claimant's right to have more than one representative. We view the conducting officer's actions in this investigation to be an invasion of the rights of Claimant; this type of investigation is purported to be impartial and for the purpose of ascertaining facts. Idiosyncratic semantic rulings, such as that herein, may defeat the basic thrust of a "fair and impartial" investigation.

Under all the circumstances in this dispute, we do not find that Carrier's error in denying Claimant a second representative at the investigation had a demonstrable prejudicial effect upon Claimant's case sufficient to warrant reversal (see Awards 1497, 10547, 11775 and 20238 among others).

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. Paulsen  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1975.