

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20765  
Docket Number CL-20732

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
PARTIES TO DISPUTE: (  
(The Atchison, Topeka and Santa Fe Railway Company  
( - Coast Lines -

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7560) that:

(a) Carrier violated the rules of the current Clerks' Agreement at Richmond, California, commencing on or about June 10, 1971, when it wrongfully discharged Mr. J.H. Cleveland from service; and,

(b) Mr. J.H. Cleveland shall now be reinstated and compensated for all monetary loss suffered commencing June 10, 1971, and continuing until such time as he is reinstated because of such violation of Agreement rules.

(c) The Carrier shall be required to pay 6% interest compounded daily on all wages wrongfully withheld from Mr. Cleveland commencing June 10, 1971.

OPINION OF BOARD: Claimant was discharged for insubordination on June 10, 1971 and reinstated on December 21, 1971 without pay. The Claim herein involves essentially a Claim for lost pay due to the alleged improper discharge.

Petitioner argues that the investigation in this dispute was improper, denying Claimant due process, on a number of grounds. First it is contended that the determination of guilt was made by a Superintendent "...before the transcript of testimony at the hearing was completed and without the Hearing Officer making any recommendation or findings as to the credibility of the witnesses...." This contention must be rejected because not only does the record fail to support the allegation but more specifically because this issue was not raised by Petitioner during the handling on the property and thus is not properly before us (see Awards 14641, 18656, 19101, 19746 and many others). It is argued further that Carrier refused to allow a fellow employe to appear as a witness in behalf of Claimant; the record does not support this contention. The Organization submitted signed statements from several employes, allegedly relevant to the dispute, in a conference with Carrier some six months after the close of the investigation. Carrier argues that such evidence cannot be considered by the Board, and that position is well taken. We have repeatedly held that evidence submitted after the conclusion of an investigation is inadmissible (e.g. Awards 15574 and 19808).

Petitioner argues further that Claimant was denied due process because the determination of guilt was made less than twenty four hours from the close of the hearing and prior to the typing of the transcript of the investigation. It must be noted that there is no Agreement support for this position since the rules do not provide for any minimum time period which must expire before a decision is rendered; usually expeditious handling is preferred by Petitioners. Additionally, there is no requirement that the transcript be typed prior to the decision being rendered. An examination of the transcript does not support Petitioner's additional charges that Claimant's rights were violated in other respects.

The investigation in this dispute contains substantial evidence of probative value, even though denied by Claimant, to support Carrier's conclusion that there was insubordinate behaviour. Petitioner argues that the discipline imposed was disproportionate to the degree of alleged insubordination. This Board over the years has consistently found that insubordination justifies dismissal (see for example Awards 16948 and 16074). In this dispute, in view of Claimant's reinstatement, we certainly do not view the penalty as arbitrary or inappropriate.

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:

  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1975.