NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21024
Docket Number CL-20848

Louis Norris, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes

(Robert W. Blanchette, Richard C. Bond, and John McArthur, Trustees of the Property of Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7573) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of 30 days suspension on Claimant C. F. Pippin, Clerk at the Carrier's 12th Street Coach Yard, Chicago, Illinois, Western Region, Chicago Division.

(b) Claimant C. F. Pippin's record be cleared of the charges brought against him on June 12, 1973.

(c) Claimant C. F. Pippin be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: In this dispute Petitioner charges that Carrier violated the controlling Agreement, particularly Rule 6-A-1, when it assessed Claimant discipline of 30 days suspension for alleged insubordination on June 8, 1973. The specific relief demanded is set forth in the Statement of Claim.

The pertinent facts are that on the date in question Claimant held the position of Yard Clerk, with 20 years of service. It is alleged by Carrier that at about 11:30 a.m. on said date Trainmaster McCormick, upon discovering that no one was working the desk job of the vacationing clerk, (which Claimant was supposed to be doing on temporary assignment) spoke to Claimant personally on the telephone (with the Yardmaster also on the phone) and directed him to "go downstairs and cover this job". It appears that Claimant refused to do so. Whereupon he was advised by Mr. McCormick that he was being held out of service.

Thereafter, formal Investigation was held, Claimant was found guilty of insubordination as charged, and discipline of 30 days suspension was imposed, less time held out of service.

Petitioner contends that: (1) Claimant was improperly held out of service; (2) that he did not receive a fair and impartial hearing; (3) that he was not proven guilty of the "specific charge" against him; and (4) that the discipline imposed was unwarranted and, in any event, excessive.

As to the first contention, we find nothing in the record before us to indicate that this issue was raised by Petitioner during the handling of this dispute on the property. Accordingly, such issue constitutes "new matter" and as such is inadmissible for consideration of the Board at this stage of the appellate process. We will therefore sustain Carrier's objection on this issue.

See Awards 16348, 19928, 20194, 20250 and 20270, among many others.

On the second issue, it is Petitioner's contention that the Notice of Investigation erroneously stated the time of the alleged offense as "12:30 P.M." instead of "11:30 A.M." and that this rendered the Notice defective. Further, that the finding of guilt, therefore, was not based on the "specific charge" contained in the Notice.

We do not agree. Firstly, the Notice was amended and corrected the morning of the Investigation and no request was made at any time by Claimant or the Organization representative for postponement of the hearing. Secondly, and of far greater significance, is the fact that only one incident was involved, which was specifically detailed in the Notice except for the erroneous time. Claimant knew full well what he was being charged with and the time it had occurred and, as his testimony demonstrated, was under no disadvantage in his ability to testify fully in his own defense. In these circumstances, there is no question but that he was fully apprised "of the exact offense involved" as required by Rule 6-A-1, subdivision (b).

In Award 17998 (Quinn) we stated:

> ". . . A notice is sufficient if it meets the traditional criteria of reasonably apprising an employe of what set of facts or circumstances are under inquiry so that he will not be surprised and can prepare a defense."

To the same effect, see First Division Awards 13008 (Jacobson), 14413 (Simmons), 19671 (Sempliner) and 20052 (Seidenberg), among others.

We conclude that Claimant knew exactly what set of facts were "under inquiry" and that none of his rights of due process were violated by this inconsequential and non-prejudicial error in the Notice. Hence, we do not sustain Petitioner's objection on this point.

We have carefully reviewed the transcript of the Investigation, and the method in which it was conducted, and find no basis upon which to conclude that the hearing was in any sense unfair or not impartially conducted. Claimant was represented by the Organization, full opportunity was afforded for cross-examination, and Claimant was given full scope to present such testimony as he deemed pertinent.

On the merits, the testimony is conclusive that Claimant was guilty of insubordination as charged. Trainmaster McCormick testified:

> ". . . I asked Mr. Pippin why he was not downstairs working the desk job, he told me he was too busy too much work to do. I said I don't give a damn what you have to do you go downstairs and cover this job. He said, by God I don't have to. I said I'm not asking you I'm ordering you and if you don't go down there and work I will take you out of service. He said I'm not going down there to work. I said Mr. Pippin you are held out of service. . ."

Yardmaster Schmidt corroborated Mr. McCormick as to the instructions to Claimant to work the desk job as he had done previously, to which Claimant replied "you have to bulletin it" and "I have to get my work done upstairs and Union Station work first." (Emphasis added) Mr. Schmidt stated further:

> "Mr. McCormick said let that go and get the desk job done, he McCormick said you work the desk job or you are pulled out of service. Mr. Pippin said I will not work the desk job." (Emphasis added).

Petitioner refers us to cross-examination of Mr. Schmidt in which he was asked whether it was not a fact "that Mr. Pippin advised (Mr. McCormick) after some moments of deliberation that he would proceed downstairs and work the desk job just as soon as he completed the work that he was involved with." (Emphasis added). To which Mr. Schmidt replied "Yes".

Claimant did not deny any of the foregoing testimony of either Mr. McCormick or Mr. Schmidt. In fact, only one question was asked him bearing directly on the charge of insubordination, and that by Mr. Guiffre, the Local Chairman:

> "Q. You heard the charge against you, insubordination, you refused to comply with instruction of Mr. A. J. McCormick, Mr. Pippin I ask you did you refuse a direct order from Mr. McCormick?
>
> A. No sir."

In the face of the direct testimony of Mr. McCormick, buttressed by the corroborating testimony of Mr. Schmidt, this simple denial by Claimant was far from sufficient. Nor is it persuasive to contend, as does Petitioner, that Claimant intended to comply "after some moments of deliberation" and "just as soon as he completed" his other work.

Claimant's responsibility here was a simple one: to comply immediately with a proper order of a superior. He did not have the option to decide when he would comply, and this is clearly the issue before us. In the latter connection, we held in Award 16744 (Friedman):

> "It is axiomatic that, absent such reasons as health or safety, an employe must comply with management's instructions and if the propriety of the instructions are disputed, grieve thereafter. Many eloquent words have been written about the chaos which would result if each employe had the right to deliberate over each instruction - and then opt not to comply with it."

To the same effect, see 16074 (Perelson), 20030 (Eischen), 20762 (Franden), 20651 (Quinn), and 14851 (Hamilton), among others.

We find, therefore, that Carrier amply sustained its burden of proof establishing Claimant guilty of insubordination by substantial probative evidence in the record preponderating in its favor. Under the clear weight of authority, we are not authorized in these circumstances to disturb Carrier's findings.

See Awards 6387 and 20245 (Lieberman), 19487 (Brent), 17914 (Quinn) and 15574 (Ives), among many others.

Petitioner cites Award 20919 (Norris) as precedent to the contrary. However, the facts there are at substantial variance with those involved here. In that case, the Claimant was tried in absentia, the "corroborating witness" did not in fact corroborate the supervisor, and Claimant did not refuse to comply. In fact, she did comply when she was told to "stop that for now." These facts are not present in the dispute now before us.

Finally, on the record, the discipline of suspension of 30 days for insubordination is neither unreasonable, arbitrary or capricious nor in violation of due process.

See Awards 16074 (Perelson), 20030 (Eischen), 20772 (Sickles, 20762 (Franden) and 20770 (Norris) among a host of others.

Accordingly, based on the entire record and controlling authority, we will deny the claim.

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 not violated.

A W A R D

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 March 1976.