

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21040  
Docket Number CL-21249

Joseph A. Sickles, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
GL-7930, that:

1. Carrier violated the Agreement Rules, particularly Rule 21, when it dismissed Mr. Clarence Portz, Jr. Materials Handler at Clinton, Iowa, from service effective January 7, 1974 without cause, and;

2. Carrier shall be required to compensate Mr. Clarence Portz, Jr. from January 7, 1974 forward for all losses sustained account of such dismissal, to include interest at the rate of 6% per annum.

OPINION OF BOARD: On December 26, 1973, Claimant was charged as follows:

"Conduct unbecoming an employee of the Chicago and North Western Transportation Company, specifically killing a cat in the Welfare Area of the Storehouse, on or about 10:30 A.M. on December 20, 1973."

Investigation was conducted on December 26, 1973. On January 4, 1974, Carrier forwarded notification of discharge from service which Claimant received on January 7, 1974.

Claimant contends that Carrier failed to establish that he was guilty as charged, and also notes that Carrier's various procedural violations deprived him of a fair and impartial investigation, as well as due process.

Rule 21(a) specifically states that in cases where discipline is administered, a decision, in writing, will be rendered within seven calendar days after the completion of investigation. There is no question that the seven-day rule was not complied with; but Carrier defends its action on the basis that in order to give Claimant a fair and impartial investigation, all findings of the investigation were sent to the Labor Relations Department "for their verdict."

Claimant next asserts that the first Carrier designated appellate officer forwarded the file to the final designated appellate officer for his "verdict." It is alleged that intervention by the highest appellate officer at the initial level of appeal effectively destroyed a meaningful avenue of appeal. Claimant also notes that participation in the appellate process by the individual who made the initial decision to discharge was prejudicial to Claimant's substantial rights. We also note that the same official preferred the charges, appeared as a witness and made the decision to terminate.

Further, Claimant notes that the charge specified an improper action at 10:30 a.m., whereas at the hearing, Carrier attempted to show that the killing occurred between 9:00 a.m. and 9:15 a.m.

At the investigation, Claimant denied killing the cat, and produced witnesses who corroborated his version of the events of the morning. Carrier relied upon an asserted admission by Claimant; however, Claimant denies that he had admitted killing the cat.

On the property, Carrier conceded that there was no excuse for failure to issue the discipline within the time limits, but it concluded that the Claimant was not prejudiced by the delay, and it also states that the seven-day rule is merely a guideline. In any event, it urges, any award of damages for failure of compliance is limited to the date of the late denial.

In our consideration of the various procedural issues presented, we are, of course, mindful of the fact that the Claimant did not, at the hearing, concede guilt of the offense; but rather, he insisted that he was innocent and presented witnesses to corroborate the pertinent time frames.

We have also noted Carrier's contentions, as stated at Page 8 of its Ex Parte Submission:

"As pointed out in the carrier's submission in previous cases, the supervising officer's signature on the notice of charges and the discipline notice is, in effect, a formality; that is, he signs such notice as the claimant's supervisor. There is no basis for the organization's contention that when the supervising officer conducts the investigation, the employee investigated is deprived of a fair investigation. In any event, in the instant case, the carrier does not understand the employees' objection against having the person who signs the notice of charges appear as a witness against the claimant. With regard to the employees' contention that the supervising officer who signs the notice of discipline is someone who 'rendered the decision of dismissal,' there is no support for such

a statement. The one who rendered the decision was the investigating officer, not the one who notified the claimant of the decision."

This Board has been clear in its refusals to allow Organizations to go behind the record as established on the property and to advance arguments that were aimed at showing a prejudicial sequence of events, contrary to un rebutted matters of record. That same exclusion must control here. This Board will consider that the documents of record are accurate on their face and we will not speculate as to what may, or may not, be a mere formality.

After thorough review of the entire record and the authorities cited by the parties, the Board is of the opinion that a combination of procedural errors existed which, considered in toto, adversely affected Claimant's rights - to his prejudice.

Without regard to the remedy available solely to cure the violation of the time limit rule, we note that the cause of the delay was to obtain a "verdict" from the staff of the highest appellate officer. To be sure, Carrier states that the word "verdict" is being used in an improper sense and it denies that any functions were usurped. But, as noted above, we are limited to the events of record; which clearly indicate that certain functions were performed in a manner not prescribed by the Agreement. While we find no difficulty with a charging officer being a witness, when we note that the same person then (according to the record before us) renders the discipline and sits in an appellate capacity - and when we note that said matters were raised for consideration on the property - we feel that there should be some consideration given to those factors when we view the overall procedural question.

We are also mindful of the fact that the charge was incorrect as to alleged time. After certain testimony was received at the investigation, the individual who brought the charges dismissed the inconsistency:

"Q. Approximately what time do you say that the cat was killed when on the charges it states on or about 10:30 a.m. and this man stated he was on the main line working on the burro crane?

A. It must have been an error in typing because everything that has gone on so far is between 9:15 and a quarter to 10:00.

Q. It says on the charges '10:30'.

A. That couldn't be right - it must have been a typographical error or something."

We do not comment upon the possible end result concerning each isolated allegation of error. But, in a hotly contested case concerning severe questions of credibility, we feel that the combination of errors, considered in their entirety, were prejudicial to Claimant, and we will sustain.

Although numerous Awards of this Board have refused to grant interest, we find that Carrier never contested that portion of the claim on the property, although Claimant had raised and pursued the matter. Under the circumstances, it is not improper to sustain the claim in its entirety.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1976.