

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21237  
Docket Number SG-20695

Dana E. Eischen, 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:

Appeal from the discipline imposed on Mr. J. P. Backes as a result of a trial held on September 27, 1972.

OPINION OF BOARD: Claimant, Signalman Joseph P. Backes, on February 20, 1973 was assessed 15 days actual suspension following hearing and investigation into several charges as follows:

- "1. Failing to inspect telephones at Hollis as directed by foreman;
2. Improperly advising foreman that truck VOIC required gas;
3. Failure to comply with instructions of foreman to gas up truck at Holban Yard;
4. Unauthorized trip to Morris Park;
5. Having unauthorized items on truck VOIC."

The Organization appealed the discipline on several procedural grounds to wit:  
1) Notice of Discipline not given to General Chairman per Rule 60 (c);  
2) Violation of Rule 70 regarding "reinstatement of dismissed employees";  
3) Claimant denied "representative of his choice" in violation of Rules 25 and 59; and, 4) No copy of transcript was given to General Chairman by Carrier thereby again violating Rule 59. Additionally, the Organization asserted that no substantial evidence supported Carrier's imposition of discipline. The Organization apparently concedes that if, arguendo, the charges were proven in a procedurally proper fashion, then the quantum of assessed discipline was not unreasonably disproportionate. Carrier maintains that Claimant's procedural rights were not violated, substantial evidence supports the charges and the discipline was properly assessed.

We turn first to the procedural points raised by the Organization and treat them seriatim. Our touchstone in such analysis must be the controlling Agreement and our own Circular No. 1. With respect to the alleged violations of Rule 60(c) and 70 we find they are inadequate on their face. The latter cited contract provision has no bearing whatever in this suspension case and the former contains no requirement for notifying the

General Chairman of the initial imposition of discipline but rather applies only to appeals. In connection with Rules 25 and 59 the Organization sees a violation in Carrier's refusal to postpone the hearing so that Claimant's private attorney could attend. This allegation turns on a definition of the term "duly accredited representative". The Agreement itself at Rule 25 is clear and express leaving no room for ambiguity and no need for interpretation in this case:

"When the term 'duly accredited representative' appears in this Agreement, it shall be understood to mean the regularly constituted committee (or any member or members thereof) of the organization recognized or designated as the representative, for the purposes set forth in the Railway Labor Act as amended, of the employees covered by this Agreement."

Finally, the Organization on behalf of Claimant urges that Carrier committed fatal prejudicial error and denied Claimant a fair investigation because a copy of the transcript was not given to the General Chairman by the Carrier. The Organization finds therein a violation of both Rule 59 of the Agreement and Circular No. 1 of this Board. We cannot concur with this view. Whatever the wisdom and efficacy of such a practice we do not interpret Rule 59 as mandating Carrier to provide the General Chairman with a personal copy of the transcript. The Agreement is a product of bilateral negotiations, Rule 59 has no provision regarding such procedure and we may not usurp the negotiators' function by adding such a requirement through arbitral interpretation. We note additionally that the General Chairman was afforded opportunity to examine and study the transcript in Carrier's offices and that he did so during appeal of this claim. Nor can the Organization find comfort in Circular No. 1 in this case. We have studied each of the authorities cited by the able advocate for the Organization during our panel discussion. Each dealt with situations wherein information and evidentiary documents were withheld by a party from handling on the property and then offered for consideration de novo at the appellate level. In those cases we declined to consider such evidence nor would we hesitate to do so decline in future cases of such clear failure to abide by our Rules. See Awards 2556, 8068, 11812, 12942 and 13029. But these authorities do not find a parallel in this case and the failure to provide a personal copy of the transcript is not tantamount to withholding of evidence in violation of Circular No. 1.

Turning to the merits of the case, the record does support a finding that Claimant failed without justification to carry out the reasonable directions of his supervisor. In our judgment the first four (4) charges cited supra are supported on the record before us. We do conclude that the fifth charge of possession of unauthorized items was not fully proven because no nexus of ownership, dominion and control or knowledge of presence was ever drawn between Claimant and the items in question. But leaving aside that charge the imposition of 15 days suspension for the other proven offenses is not arbitrary, unreasonable or capricious. We shall 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 Employees involved in this dispute are respectively Carrier and Employees 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 28th day of September 1976.