

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22087
Docket Number CL-21922

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
(GL-8332) that:

(1) Carrier violated the Rules Agreement effective May 1, 1955 and amended July 15, 1967, particularly discipline Rule 45 when it imposed discipline of dismissal from service upon Mr. Jayson P. Law, Store Helper Ordinary, Omaha Store Department, Omaha, Nebraska, Eastern District Roster 37 after hearing held on April 22, 1975 which was neither fair or impartial thus denying him due process of law.

(2) Claimant should be immediately restored to service of the Company with all rights unimpaired.

(3) He should be compensated for each work day commencing on April 16, 1975 and continuing until adjusted, in addition to any and all overtime he would have worked had he remained in the employ of the Carrier, subject to a check of company records, and the amount of interest allowable by law on any monies that have been or will be deprived him account improper dismissal from the service of said Company.

(4) All agreement rights should be restored including the premiums for Travelers Group Insurance Policy GA-23000 and the Union Pacific Railroad Employees Hospital Association. He should also be reimbursed for any medical expenses accruing to him and his dependents while so improperly withheld from the Company's service.

(5) His personal records should be cleared of any mention of the disciplinary actions arising from the notice of hearing dated April 17, 1975 or the unfair and partial hearing held on April 22, 1975.

OPINION OF BOARD: Claimant was withheld from service effective April 17, 1975, and subsequently dismissed from service effective May 5, 1975, relative to incidents occurring on April 14-15, 1975. Claimant was subsequently reinstated by the Carrier as of August 4, 1975, although the Organization by proper notice continued its claim relative to the period of time Claimant was suspended without pay and dismissed.

The Organization claims the Carrier violated Rule 45 which provides in part as follows:

"No employee will be disciplined or dismissed without a fair hearing by his supervising officer. Suspension in proper cases pending a hearing, which will be held within seven (7) days of the time charge is made or employee suspended, will not be considered a violation of this principle."

The claimed violation has to do, in the main, with the conduct of a Carrier representative, the Storekeeper in charge of the Store Department where the Claimant was employed.

On many occasions, the Board has found no objectionable conduct when the Carrier has one of its representatives carry out more than one role in the investigation, hearing, and determination of penalty in a disciplinary matter. Such multiple roles are not automatically invalid, nor do applicable rules usually prohibit such procedure. The essential point is that the employee receive a "fair hearing". In this instance, the Board finds that the Claimant did not receive a fair hearing, owing to the overbearing and patently partial attitude and conduct of the Storekeeper.

The record shows that the Storekeeper preferred the charges, participated in the preparation of Carrier witnesses for the hearing, conducted the hearing, issued the notice of dismissal, and then served as a Carrier representative to decline the claim put forward by the Organization following the dismissal. Further, the Storekeeper on a number of instances indicated his belief that the Claimant was, in his judgment, guilty of the charges of which the Claimant was accused, and did so prior to the conclusion of the hearing.

Numerous previous awards guide the Board in determining that these actions obliterated the concept of a "fair" hearing, even acknowledging the latitude available to the Carrier in disciplinary

proceedings. Among others in point are Fourth Division Awards No. 1175 (Nahstoll) and No. 1951 (Weston); First Division Award No. 20335 (Davey); and Second Division Award No. 5223 (Weston).

Since the hearing in this matter is found not to be in conformity with Rule No. 45, the Board will sustain the claim on this basis, and no discussion of the alleged incidents is required. The claim is sustained, however, only to the extent provided in Rule 45(c).

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 violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1978.