

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22330  
Docket Number MS-22410

Abraham Weiss, Referee

PARTIES TO DISPUTE: (D. E. McCullough  
(  
(Norfolk and Western Railway Company  
(Lake Region)

STATEMENT OF CLAIM: This is to serve notice as required by the rules of the National Railroad Adjustment Board of my intention to file an Ex Parte submission on January 31 1978. Involving the question of my being unjustly dismissed from the employment with the above said employer, and my not being allowed a fair and Impartial Investigation on March 22, 1977.

OPINION OF BOARD: In this case, Claimant McCullough, while working as a machine operator in Carrier's Maintenance of Way Department in its T-7 Tie Gang at Muncie, Indiana, was disciplined by dismissal for his responsibility in connection with an unauthorized absence from his assignment on March 8, 9, 10 and 11, 1977.

At the outset, Carrier has challenged the jurisdiction of this Board to review the instant case because of the unusual circumstances which are involved. Therefore, we will first address ourselves to this threshold issue.

From the record we find the following sequence of events: Claimant McCullough was disciplined by dismissal on March 29, 1977. The representative Organization, on Claimant's behalf, appealed the dismissal using the prescribed procedure on the property.

However, on May 15, 1977, while the Organization was processing his case, Mr. McCullough, on his own behalf, submitted a Notice of Intent to this Division of the National Railroad Adjustment Board. Mr. McCullough withdrew his Notice of Intent on September 26, 1977.

In the meantime, the representative Organization, on Claimant's behalf, continued its appeals on the property to and including the highest appeals level where the appeal was denied on September 16, 1977. Subsequently, the representative Organization petitioned Carrier to place this dispute on a docket of cases for presentation to Public Law Board No. 1837.

But before the Public Law Board could act on the case, Claimant McCullough, on his own behalf, and within the applicable time limits for such action, again submitted his dispute to this Board for adjudication.

Because the case was handled on the property in the "usual manner," including appeal to the highest authorized Carrier officer, and including a timely presentation to this Board, this Board does have jurisdiction over the dispute and will proceed to handle the matter on its merits.

Petitioner has challenged his dismissal on the grounds that:

1. The hearing was not timely held;
2. The hearing was not fair and impartial because of the multiple roles played by the Division Engineer;
3. The representative organization refused to represent him; and
4. The charges were not proven.

Our review of the complete record in this case fails to find support for any of these contentions.

Rule 22 of the Agreement requires that:

"The date for the investigation shall be fixed within 10 days after the date charged with the offense or held from service."

The record shows that the charge was made by letter dated March 14, 1977, and the investigation was held on March 22, 1977. Contrary to petitioner's allegation, there is insufficient evidence in the record to support his contention that he had been held from service on March 8, 1977. Therefore, the investigation was timely held.

The fact that the same Carrier official signed the notice of charge, conducted the hearing and assessed the discipline, does not sustain the claim that a fair and impartial hearing was denied. Our examination of the transcript of the investigation reveals no evidence of bias or prejudice. There is nothing found in the record which specifies who should make charges, conduct hearings, or assess discipline.

This Board has ruled on many occasions that the use of the same Carrier officer to serve in multiple roles in discipline proceedings is not, per se, violative of the employee's rights. See Third Division Award Nos. 21395, 21285, 20673 among many others.

The argument that "The union has refused to represent me in this case" simply is not true. Claimant was vigorously represented by the representative Organization at the investigation hearing. The organization has timely and properly handled the appeal on Claimant's behalf at all levels of procedures both on the property and to a Board of Adjustment.

As for the charges as made, the hearing record contains more than substantial evidence of probative value to support the contentions that Claimant did, in fact, walk off his job on March 8, 1977 and was absent without authority on March 9, 10 and 11, 1977. Given this situation, this Board may not substitute our judgment for that of the Carrier in the assessment of discipline. There is no indication in this record that Carrier was arbitrary, capricious or vindictive or acted in bad faith in the placement of charges, development of information or assessment of discipline. There is no basis upon which this Board could reverse or modify the discipline as assessed. Therefore, the claim must be and is denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Paulke  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1979.

