NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22559
THIRD DIVISION Docket Number CL-22651

Paul C. Carter, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8620) that:

(a) Carrier violated the rules of the Agreement, effective July 1, 1972, particularly Article 18, among others, when on September 29, 1977, it dismissed Mr. W. E. Stewart from active service on the assumption that he was a suspect in a stealing incident that took place on August 4, 1977.

(b) Carrier violated the rules of said Agreement when it postponed Hearing scheduled for September 1, 1977, due to not knowing the whereabouts of their key witness, rescheduled the Hearing for September 27, 1977, but refused the request of the Duly Accredited Representative to postpone the Hearing until after November 21, 1977, the date Mr. Stewart was scheduled to appear at a Civil Court Hearing.

(c) Carrier's action in dismissing Mr. Stewart from service on unproven charges was based on predetermined guilt and mere suspicion and therefore was unjust, unreasonable and an abuse of Carrier's discretion.

(d) Carrier shall now restore Mr. Stewart to active service with all his seniority rights unimpaired and permit him to return to his former position or any position bulletined during his absence to which his seniority will entitle him.

(e) Carrier shall expunge from his record any notation placed thereon as a result of its improper action and compensate Mr. Stewart for all time held out of service, including protective agreement payments which would have accrued to him had he remained in service, inclusive of reimbursement for any medical expenses, hospital, surgical or related expenses that Mr. Stewart is required to assume for himself and/or dependents to the extent that such expenses would have been paid by Travelers Insurance Company had Claimant continued in Carrier's service.

OPINION OF BOARD: Claimant was employed as a Station Cleaner. On August 26, 1977, Carrier's Assistant Engineer Fixed Property, notified Claimant to appear for a hearing at 10:00 A.M., Thursday, September 1, 1977, on the following charges:

> "1. Violation of that part of Washington Terminal Company General Rule 'N' which reads 'Employes must be of good moral character and must conduct themselves at all times, whether on or off Company property, in such manner as not to bring discredit upon the Company', by being arrested on Company property.
>
> "2. Violation of that part of Washington Terminal Company General Rule 'N' which reads 'Stealing', when you were arrested at 1:30 p.m., on August 23, 1977 by United States Park Police Detective Simmons."

Claimant had been removed from the service on the date of his arrest.

The hearing was held on September 27, 1977. On September 29, 1977, claimant was notified that he had been found guilty as charged and was dismissed from the service. The arrest was in connection with an alleged theft that occurred in the Y.M.C.A. The Claimant was later acquitted in Criminal Court of the theft charge.

It appears to be the position of the Carrier that its General Rule "N," quoted in the letter of charge, extends to persons arrested. It is the finding of this Board that such position is untenable. We concur in the Findings of Second Division Award No. 7130, where it was held:

> "We disagree with the Carrier as to the crux of this case, as stated above. The initial question for us is whether the applied portion of Company Rule 'P', 'the arrest of an employee by proper police or legal authority with resultant filing of charges....is sufficient cause for discipline,' is a reasonable rule? We find that it is not. We find such a rule, as applied in the instant case, to be manifestly unreasonable. Certainly the Carrier has the right to establish reasonable operating rules, but to have a rule that subjects

> "an employe to discipline -- the ultimate discipline of dismissal -- on the sole basis of the employee having been arrested and charged with a crime, is contrary to reason and fundamental fairness. It is a harsh fact of life in our society that innocent persons may be erroneously arrested and charged with a crime, only to be later fully exonerated at a trial when the individuals' case(s) are fully presented before a judge and/or jury. Such is what happened in the instant case, and the Carrier based on Rule 32, is responsible to pay this fully exonerated employee for all time lost, less any amount earned during the period of dismissal."

See also Third Division Award No. 21498, in which this Division concurred in the ruling of Second Division Award No. 7130.

In view of our decision on this issue, we need not go into the merits of the arrest; discuss the difference in evidence as required in legal proceedings and disciplinary proceedings, or to pass on other issues raised.

We take this occasion to call attention that some of the Carrier's Exhibits, presented with its submission, are practically illegible, especially Carrier's Exhibit "E", Pages 21, 23, 24, and 25. If parties to disputes before this Board expect their exhibits and other materials to be considered by the Board, then such exhibits and materials must be submitted in legible form.

The claim will be sustained, except for that portion of Part (e) reading:

> "...including protective agreement payments which would have accrued to him had he remained in service, inclusive of reimbursement for any medical expenses, hospital, surgical or related expenses that Mr. Stewart is required to assume for for himself and/or dependents to the extent that such expenses would have been paid by Travelers Insurance Company had Claimant continued in Carrier's service."

The Organization has cited no agreement support for this portion of 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 violated to the extent shown in Opinion.

A W A R D

Claim sustained to the extent shown in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: C. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1979.