

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22890  
Docket Number CL-22767

Martin F. Scheinman, Referee

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

STATEMENT OF CLAIM: Carrier did not violate the agreement with the Brotherhood of Railway, Airline and Steamship Clerks as alleged, when it dismissed Mr. O. V. Mitchell, Clerk at Columbus, Georgia, from the service of the Carrier for cause on October 27, 1977, following a fair and impartial investigation.

Since the agreement was not violated, Mr. Mitchell is not entitled to payment for all time lost, including any overtime to which he would have been entitled had he been in service from October 19, 1977 to January 19, 1978, as claimed in behalf of Mr. Mitchell by the Clerks' Organization.

[Carrier's file CL-2719.]

OPINION OF BOARD: After investigation, Claimant, O. V. Mitchell was dismissed from service on October 27, 1977. Claimant was subsequently reinstated on a leniency basis with his seniority unimpaired but without pay for time lost. In all, Claimant was out of service from October 19, 1977 through January 19, 1978.

Carrier charged Claimant with insubordination for refusing to obey the instructions of Superintendent R. J. Reilly to come to Reilly's office. While both parties have addressed, at considerable length, prior meetings, prior instructions and other possible prior insubordination, e.g., the refusal to perform certain work, these are not before us. As an appellate body, our concern is only the offense Claimant is actually charged with -- the refusal to comply with the instructions of Superintendent Reilly to enter the office.

The Organization contends that Claimant declined to enter Reilly's office because he wished to "prevent a confrontation at which he would have no witnesses to support his side of the story should the need arise." In its view, Claimant was not insubordinate.

The evidence conclusively establishes that Claimant was instructed to go into Reilly's office. Claimant heard the order. He understood it.

The order was not unreasonable. Yet, Claimant steadfastly refused to obey the direct order unless he was afforded union representation. He came to the office door but despite repeated instructions he refused to enter it.

In relevant part, Rule C-3 -- Representation states:

"At investigations and hearings an employee may be assisted by one or more duly accredited representatives. ...."

Under Rule C-3, Claimant is entitled to representation at an investigation or hearing. We must conclude that the meeting Claimant was instructed to attend cannot be characterized as either an investigation or a hearing. Rather, we are persuaded that it was merely a meeting to discuss an employment problem.

Moreover, Claimant's behavior was not due to his belief that the meeting was a hearing or investigation. He acknowledged that he did not know the purpose of the meeting.

A supervisor may meet with an employee to discuss a job related matter without the necessity of having union representation. See Third Division Award No. 22152. The parties have provided that the Union is not required to be present at every discussion between an employee and his supervisor. Representation is only required at an investigation or hearing. This is the import of Rule C-3.

Thus, Claimant should have entered the room. He was obligated to obey the instruction. He did not and therefore, is guilty of insubordination as charged. As such, he is subject to appropriate disciplinary action.

As to the appropriate penalty, we are convinced that the 90 day suspension imposed is excessive. Given all of the circumstances, the 90 day suspension issued to Claimant should be reduced to a 60 day suspension and we do so find.

Finally, the Organization's procedural arguments, e.g., that the charge was not sufficiently precise and that the denial of the initial appeal did not meet the requirement for specificity are rejected.

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 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 discipline was excessive.

A W A R D

Claim of the Organization sustained to the extent and in the manner set forth in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1980.