

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23091  
Docket Number CL-22584

Dana E. Eischen, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,  
                                  { Freight Handlers, Express and Station Employees  
                                  {  
                                  { Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
                                  (GL-8580) that:

1) Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin on February 16, 1977 when it failed to conduct a fair, impartial and complete investigation into charges filed against employees W. P. Ciesinski, D. Mazurczak and D. H. Dawe.

2) Carrier further violated the Clerks' Rules Agreement on February 26, 1977 when, in abuse of its discretion it assessed discipline of a 90-day deferred suspension with one (1) year probation against the employees named above without first presenting convincing evidence to prove their responsibilities or guilt.

3) Carrier shall be required to erase the discipline imposed and the records of all three employees named above shall be cleared of the alleged charges.

OPINION OF BOARD: The three Claimants involved in the instant dispute were employed as Store - helpers in Carrier's Material Department at Milwaukee, Wisconsin. On February 11, 1977 each Claimant received the following letter:

"A formal investigation will be held on Wednesday, February 16, 1977 at 9:00 a.m. in the office of the Manager of Materials for the purpose of developing the facts and circumstances in connection with the following. You are hereby instructed to be present at the time, date and place as mentioned herein.

1. For alleged violations of the CMStP&P Safety Rules namely General Notice, General Rule A and specifically Rules 109 and 114 on or about 10:00 a.m. on February 1, 1977.

2. For allegedly participating in the burning of a volatile, flammable liquid on or about 10:00 a.m. on February 1, 1977 in the men's toilet room on the north end of SD-43.
3. For alleged failure to report a fire in the men's toilet room on the north end of SD-43 on or about 10:00 a.m. on February 1, 1977.
4. For allegedly destroying company material on or about 10:00 a.m. on February 1, 1977.
5. For allegedly using company material without proper authorization on or about 10:00 a.m. on February 1, 1977.

You may be represented by one or more duly accredited representatives."

Claim was filed on behalf of Claimants by the Organization on May 20, 1977.

The Organization maintains that Carrier has not met its burden of proof in establishing presence of Claimants at the site of the arson incident at the alleged time of its occurrence. As support for this argument, the Organization points to the congruence of Claimants' testimony as to location and activity during the alleged incident, contrasted with the lack of such complete uniformity of Carrier witnesses testimony regarding the exact time sequence. We are not persuaded that absolute homogeneity of testimony is an unerring indicator of veracity. Indeed, there is evidence in the transcript that Claimants assembled on at least one occasion prior to testifying "trying to figure out exactly where we were at exactly what time . . . ."

Based upon a careful reading of the ponderous and convoluted transcript before us we find that Carrier has indeed carried its burden. Conflicts with respect to time among Carrier witnesses' testimony are not so severe as to discredit any single witness. Moreover, upon being questioned separately, Claimants failed sufficiently to refute the six Carrier witnesses. One alibi witness for Claimants was caught in blatant fabrication of facts in an attempt to corroborate Claimants' story. We find from the record that Carrier did not err in resolving the credibility conflict against Claimants.

Accordingly, we find that Carrier has met its burden of proof based on a preponderance of the evidence before us. We, therefore, find no reason to disturb Carrier's assessment of discipline.

The Claim is denied.

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. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.