

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23116
Docket Number MW-23297

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Carpenter Shelton Partee was without just and sufficient cause and wholly disproportionate to the offense with which charged (System File 1-R-119-4/11-680-120-199).

(2) Claimant Shelton Partee shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: At the time of the occurrence giving rise to the dispute herein, claimant was employed by the Carrier as a Bridge and Building carpenter, having entered the service of the Carrier as Bridge and Building helper on September 2, 1975. On January 8, 1979, claimant was advised of formal investigation:

"Arrange to report to Conference Room, Division Office Building, 3611 West 38th Street, Chicago, Illinois at 9:00 a.m., Monday, January 15th, 1979, with your representative and witness(es), if desired, for formal investigation to develop all facts and place your responsibility, if any, in connection with possible violation of Rules 2, 16 and 17 of General Rules for the Guidance of Employees, 1975 concerning the report of your alleged failure to devote yourself to duty, displaying indifference to duty and being quarrelsome and vicious to fellow employees while on duty December 6th, 7th, 12th and 13th, 1978."

By agreement with representatives of the Organization, the investigation was postponed to February 1, 1979, at which time it was commenced. After several witnesses had testified on February 1, 1979, the investigation was recessed to permit the claimant to have other witnesses present. At the same time the claimant was suspended from service. The investigation was reconvened on March 14, 1979, at which witnesses requested by the claimant were available. On April 11, 1979, claimant was notified of his dismissal from Carrier's service.

Following claimant's dismissal, claim was filed in his behalf by the representative of the Organization, requesting claimant's reinstatement with compensation for all time lost. The claim was handled in the usual manner on the property up to and including the Carrier's highest designated officer of appeals. Failing of adjustment on the property, the claim as set forth herein was filed with this Board by the Organization on November 27, 1979.

In its appeal to the Board the Organization requested that in the event the case were deadlocked and a referee assigned, the Organization desired a hearing before the Board with the referee present. Hearing on the dispute, with the referee present, was held, commencing at 11:00 A.M., November 18, 1980. Representatives of the Organization and of the Carrier were present at such hearing. The claimant was also present and made presentation in his behalf.

The contention has been made throughout the dispute that the notice of the investigation, heretofore quoted, did not meet the requirements of Article V, Section 3, of the Agreement, which reads:

"Section 3. Prior to the investigation, the employe alleged to be at fault shall be apprised in writing of the circumstance or matter to be investigated, sufficiently in advance of time set for investigation to allow reasonable opportunity to secure the presence of necessary witnesses and representatives."

Rules 2, 16 and 17 of General Rules for the Guidance of Employees, cited in the notice of investigation, read:

"2. Employees must be conversant with and obey the Company's rules and special instructions. If an employe is in doubt, or does not know the meaning of any rule or instruction, he should promptly ask his supervisor for an explanation. A copy of Form 2626 Std. is furnished each employe to be retained by him for his guidance.

"16. Employees must not be careless of the safety of themselves, or others; they must remain alert and attentive and plan their work to avoid injury.

Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious.

Employees must conduct themselves in a manner that will not bring discredit to their fellow employees or subject the company to criticism or loss of goodwill.

"17. Employees must not enter into altercations, play practical jokes, scuffle, or wrestle on company property.

Employees must devote themselves exclusively to their duties during their tour of duty.

Gambling, playing games, reading newspapers, books or use of a television while on duty is prohibited."

The rules cited were read into the investigation, and claimant stated that he was familiar with each of them. As the notice of the investigation cited the rules involved, the alleged failures of the claimant, and the dates involved, the Board considers it sufficiently precise to enable the claimant and his representative to prepare a defense. The notice met the requirements of the Agreement.

The Board finds no violation of the Agreement because of Carrier suspending claimant from service on February 1, 1979, after some of the witnesses had testified, until such time as the investigation was concluded. Section 2 of Article V of the Agreement permits such action.

The contention has also been made that Carrier officials should have discussed the charges with claimant prior to the formal investigation. We find no Agreement rule requiring that officials discuss the charges prior to the formal investigation. It has often been held that disciplinary proceedings are not criminal proceedings and that strict rules of evidence do not apply.

The Board has carefully examined the rather lengthy transcript of the investigation afforded claimant, which has been made a part of the record, has studied the briefs submitted by the parties, and listened to the arguments presented at the hearing on November 18, 1980. We find that the investigation was conducted in a fair and impartial manner. Claimant was present throughout the investigation, was represented, and was permitted to introduce witnesses in his behalf. There was substantial evidence in support of the charge against claimant. While there were conflicts between the statement of claimant and other employees, it is not the function of this Board to weigh evidence, attempt to resolve conflicts therein, or to pass upon the credibility of witnesses. There was substantial evidence of probative value that claimant was guilty of conduct that cannot be tolerated by an employer. The claim will, therefore, be 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 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:

Ally Paulve
Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1981.