

THIRD DIVISION

Award Number 23152
Docket Number CL-23186

John J. Mikrut, Jr., Referee

PARTIES TO DISPUTE:(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Norfolk Southern Railway CompanySTATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8904) that:

Carrier violated the Agreement when it unjustly suspended Yurek Hajdalenko, Extra Employee, Eastern Division, from the service of the Company, commencing September 9, 1977, and ending October 8, 1977, a period of 30 days.

For this violation, the Carrier shall now compensate Claimant Hajdalenko by paying him for all time lost as a result of this unjust discipline.

OPINION OF BOARD: Claimant, a Line of Road Extra Board Employee on Carrier's Eastern Division, was suspended from service beginning September 9, 1977 and ending October 8, 1977, it being alleged that he had failed to properly perform his duties as Clerk-Operator. The particular charges cited by Carrier in this matter are as follows:

" . . . failure to register trains on prescribed Form 774-BH, to apply gummed label numbers on waybills as per outstanding instructions, for getting collect waybills out of numerical sequence, for billing grain cars which had been previously billed . . . on September 5, 1977, and for reporting twenty-five (25) minutes late for duty . . . on September 7, 1977 . . . (Carrier's Ex. A)."

Organization contends that Carrier has failed to meet its burden of proof in this instant dispute, and that Carrier has completely and totally failed to prove or substantiate any wrongdoing on the part of Claimant. Thus, Organization argues that Claimant's suspension was unjust and arbitrary, and, therefore, improper. Further, Organization also submits that Carrier's assessment of discipline in this matter was violative of the procedural requirements specified in Rule C-1(a) of the Agreement in that: (1) Claimant was

not provided with a written statement of charges prior to his removal from service on the evening of September 8, 1977; and (2) Carrier's hearing officer failed to render a decision within ten days following the completion of the investigatory hearing.

Carrier's basic position in this matter is that the incidents of September 5 and 7, 1977 clearly demonstrate that Claimant failed to properly perform his duties as Clerk-Operator and that such evidence is sufficient to satisfy the burden of proof which is required of Carrier in disciplinary matters. Additionally, Carrier further maintains that since it (Carrier) has satisfied its burden of proof requirements, and since the degree of discipline which was assessed was " . . . fair, reasonable, and . . . not excessive," then such discipline should not be disturbed. In related fashion, Carrier also argues that insofar as "Rule C-1(f) provides that an employee must be 'found blameless' in order for the discipline to be erased and the employee paid for the pecuniary loss sustained," since Claimant " . . . was proved guilty--certainly he was not 'found blameless'," then, according to Carrier, this instant claim must be denied.

Regarding Organization's contention that Carrier violated the procedural requirements of Rule C-1(a) of the Agreement, Carrier maintains that the Trainmaster's actions which have been cited as violative by Organization were both proper and in accordance with said language; and further that Carrier Hearing Officer's decision of October 5, 1977 was rendered within the ten (10) day limit following the September 29, 1977 hearing.

The Board has carefully read and studied the complete record which has been submitted in this instant dispute, and finds that there is sufficient cause to warrant the rescission of Claimant's suspension and to substitute in place thereof a suspension of ten (10) days duration. The rationale for the foregoing conclusion is predicated solely upon the merits of this dispute since the Board can find no support whatsoever in the two (2) procedural arguments which have been raised by Organization.

Regarding the merits of this case, despite Carrier's detailed enumeration, description and reiteration of the various job duties which Claimant allegedly performed improperly, a thorough examination of the record fails to demonstrate with any degree of certainty that Claimant did, in fact, fail to properly perform all of the specific duties as charged. Moreover, there is sufficient reason to believe that Claimant was not completely responsible for a material portion of the cited dereliction. Because of these determinations, this Board is of the opinion that the penalty which was imposed upon Claimant in this matter was excessive and unreasonable, and, therefore, improper.

In arriving at the above decision the Board has taken heedful and judicious note of Carrier's arguments regarding the Board's authority to modify discipline as well as those arguments regarding Rule C-1(f) of the Agreement. While this Board is in complete accord with those principles articulated by Carrier in its argumentation, the Board does note that the basis for its decision herein is compatible with the commonly held exceptions which are contained within Carrier's citations; and furthermore, a careful reading of Rule C-1(f) in its entirety does not appear to support the extremely limited interpretation which Carrier's argument, at first blush, might suggest.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

AW. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1981.