

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23153
Docket Number CL-23227

John J. Mikrut, Jr., Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8947) that:

Carrier violated the Agreement at Waynesboro, Georgia, when by letter dated June 20, 1978, it suspended Agent-Operator M. E. Anglin from service without pay, beginning June 26, 1978 and extending through July 10, 1978, for an alleged improper handling and waybilling of car SOU-115265 on Waybill 23742, dated June 5, 1978.

For this violation, Carrier shall be required to compensate Agent-Operator M. E. Anglin for all monetary losses sustained by him during the period of suspension.

OPINION OF BOARD: Claimant, an Agent/Operator at Carrier's Waynesboro, Georgia station, was suspended from service without pay from June 26, 1978 through July 10, 1978 for the alleged improper handling and waybilling of car SOU-115265 on Waybill 23742, dated June 5, 1978.

Organization contends that Claimant was ". . . unjustly, severely, and cruelly suspended from service without cause" and further that Claimant was not afforded ". . . a fair and impartial hearing or decision" in this matter.

In support of its basic contention, Organization maintains: (1) Carrier's Statement of Charges was not "precise" as required by the parties' Agreement; (2) Carrier failed to render its decision within the required seven (7) days following the completion of the investigation and hearing; and (3) evidence presented by Carrier ". . . does not support the harsh, cruel, severe, and unjust discipline given . . ." to Claimant.

Carrier, stated simply, argues that Claimant improperly performed his duties as Agent when he accepted a shipment and billed out an excessive dimension flat car (high and wide load) without having said car inspected and

without obtaining proper clearance for the movement of same. According to Carrier, Claimant's neglect of duty was a direct violation of Carrier's Operating Rule 1167 and Item 1337 of the Agency Manual. Carrier further argues that the disciplining of employees who neglect the responsibilities of their assignments is fully justified and such action cannot be considered as being capricious on the part of Carrier.

Regarding Organization's claim of Carrier's alleged procedural violations in this matter, Carrier maintains that: (1) the June 7, 1978 Statement of Charges was sufficiently precise and clear so as not to raise any doubt whatsoever as to the specific charge which was involved; and (2) Carrier's decision to impose discipline upon Claimant was made within the seven day period of time which is prescribed within the parties' Agreement.

The Board has carefully studied the complete record in this instant dispute and finds that the Claimant's arguments as well as those of the Organization must be rejected in total.

Despite Organization's obvious sincerity regarding the two procedural violations which have been alleged to have been committed by Carrier, the Board is unable to find in the record even the least bit of probative or substantive evidence which would support this particular contention. Perhaps even more damaging to Organization's claim in this regard, after having raised the procedural questions first in its Submission, then in post-hearing correspondence, and later in its Rebuttal Brief, in each of these instances Organization thereafter failed to offer any corroborating data, any precedential documentation, or any argument whatsoever which could be utilized by the Board in evaluating the validity of this particular set of arguments. In the absence of such argumentation, the Board must assume that such evidence is either lacking or does not support the particular premise which has been alleged. In either event, however, such a conclusion is damaging for the initiator of this particular type of charge.

Regarding the merits portion of this dispute, the Board, again, must reject the arguments which have been proffered by the Organization. Plainly, there can be no doubt that Claimant was responsible for, and did, in fact, perform the disputed waybilling in the particular manner as described by Carrier. Whether or not said waybilling was improper and in violation of Carrier's Operating Rule 1167 and Item 1337 of the Agency Manual is, at this point, the essence of this instant dispute. Carrier maintains that said waybilling was performed improperly and in violation of the cited rules. Organization, however, disputes this claim and further argues that Carrier in its Submission erroneously states that Claimant "admitted guilt" when testifying at the investigatory hearing.

While it is true that Claimant never acknowledged at the investigation hearing that he was guilty of the waybilling infraction as charged, the specific admissions which Claimant did make at that time are sufficient to conclude that Claimant had acted improperly. Thus, in this respect, Organization's contention appears to be more of a matter of semantics rather than one of substance. Claimant knew the rules involved, and he knew of his responsibilities in accepting a "high and wide" load---if such were not the case, why would he have questioned the Georgia Power Company representative who brought the bill of lading to him at the depot; or why would he have subsequently attempted to contact the Georgia Power Company itself regarding the dimensions and conditions of the load? If one were to accept Claimant's and Organization's arguments regarding this particular aspect of this dispute, then one would inevitably have to conclude that the Agent/Operator would be obligated to accept any customer shipment "sight unseen" and regardless of the dimensions or condition of the load itself. This particular conclusion is absurd, and, therefore, must be avoided. Furthermore, the fact that the shipment did not move until later after it had been properly inspected and after bracing requirements had been correctly applied, does not absolve Claimant of his dereliction in this matter, nor does it serve to mitigate the extent of the penalty which has been imposed. In this regard the Board acknowledges and supports the principles contained in Carrier citations 3 NRAB Awd. 14700 and 3 NRAB 15978, wherein Referee Rohman and Engelstein summarize as follows:

"In view of the Claimant's own admissions at the investigation, this Board would be usurping its powers were it to substitute its judgement for that of the Carrier. Innumerable awards of this Board have enunciated the controlling principles in discipline cases. In the absence of sufficient evidence of probative force warranting an abuse of discretion on the part of the Carrier, we will not presume to reverse or modify the Carrier's disciplinary decisions unless it has acted in an unreasonable, arbitrary, capricious or discriminatory manner (3 NRAB Awd. 14700, BPAC vs SOU, Rohman);

and

"The record supports the charge against Claimant. In fact, he admits his mistake. That others may have initiated the error does not make him blameless. There is no showing that Carrier acted

"arbitrarily or exercised capricious judgment in imposing the discipline of dismissal from service for fifteen days. Under these circumstances, we find it unnecessary to disturb Carrier's disciplinary Action (3 NRAB, Awd. 15978, BRAC vs. SOU, Engelstein)."

In this instant case, Claimant acknowledged the commission of certain improper actions regarding the waybilling of car SOU-115265 on June 5, 1978 and Carrier's subsequent disciplinary action does not warrant reversal.

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 Employee involved in this dispute are respectively Carrier and Employee 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. Paulson*
Executive Secretary

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

