

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23370
Docket Number CL-23269

Carlton R. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8967) that:

1. Company violated the Agreement between the Parties when it wrongfully assessed Clerk Ted Noll, III, with a suspension of 6 workdays and 5 hours, June 22 through June 30, 1978, which was the time he was illegally withheld from service prior to an investigation held on June 29, 1978.

2. Company shall now be required to allow Clerk Noll, III, pay for all time lost for the period June 22 through June 30, 1978, and further that his record be cleared of the investigation and all correspondence pertaining thereto.

OPINION OF BOARD: Claimant was suspended for 6 workdays and 5 hours for having damaged an electric welding machine while moving it with a forklift truck.

Claimant objects that the rule requires precise charges and that the phrase, "to determine whether you negligently performed your duties at or about 10:00 A.M. June 22, 1978, resulting in damage to company property", is not sufficiently precise to satisfy the rule.

The Board finds that the notice to the claimant was sufficient to notify him of the charges being investigated so that he would not be surprised and could adequately prepare a defense, which is the standard established by the overwhelming weight of the Awards. We do not believe that the failure to mention the welding machine and other details in the charge in any way prejudiced the claimant. See Award 18606 where the failure to name supervisors to whom the claimant had been insubordinate during a 25-minute period was held not to make the charges imprecise.

The Board further finds that there was substantial evidence adduced at the investigation to support the charge against the claimant, and that the penalty imposed does not demonstrate an abuse of discretion which in itself would cause us to question the extent of the discipline imposed.

However, the claimant further objects to having been removed from service pending the investigation. The rule provides that in "serious cases" such as "vicious conduct", an employee may be held out of service pending an investigation.

The Carrier alleges that its immediate suspension action was prompted by the fact that three hours prior to the incident herein, the claimant had been notified to appear for an investigation for having left the premises the previous day without proper authority. Carrier representatives believed that the damage caused by the claimant might be repeated if he were continued in service.

Naturally, this is a borderline case or it probably wouldn't be here before us. But on the record, we believe that Carrier representatives had an adequate basis for believing that the claimant might cause further damage and could justifiably remove him from the service pending investigation.

While this Board will not consider lightly a suspension from service except in serious cases, it is obvious to us that the Carrier must rely upon the circumstances as they appear at the moment. The claimant is protected in that if the charges are not sustained, he will be reinstated with no loss of pay.

At issue, however, is whether the charges must specifically allege "vicious conduct" in order to satisfy the rule. We do not believe that it does. The charge must be an adequate description of the circumstances to be investigated, but there is no requirement that a specific characterization of the activity be set out in the charge, the absence of which would create a procedural defect in the proceedings.

The record reveals that the Carrier had reason to believe that the action of the claimant was "spiteful" (an acceptable colloquial definition of vicious). There is sufficient evidence, if believed, to establish that the claimant had no concern for the property which he had damaged by his actions of leaving it laying on the floor where he noticed its condition and moved away from it.

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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1981.