

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23491
Docket Number MS-23498

A. Robert Lowry, Referee

PARTIES TO DISPUTE: (James C. Cayo
(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim of James C. Cayo that:

(1) Carrier violated the rules of the SOO-BRAC Clerks' Agreement by wrongfully discharging the Claimant on August 2, 1978.

(2) Carrier shall now be required to exonerate Claimant and clear his record of the charges.

(3) Carrier shall be required further: (a) to reinstate Claimant in its service with seniority, and all other rights, unimpaired; (b) to compensate Claimant for all wages lost; and (c) to compensate Claimant for any and all monetary loss incurred resulting from the cancellation of his coverage under Group Policy GA-23000."

OPINION OF BOARD: Mr. James C. Cayo, the Claimant, was employed as an Enginemen Crew Caller by the Carrier with about 2 years service in this capacity. He was previously employed by the Carrier as Switchman but as a result of an injury he became disqualified for such service and subsequently received a financial settlement, which has nothing to do with this case, but is noted for the record. On July 24, 1978, Carrier addressed the following letter to Claimant:

"Arrange to appear in the Terminal Superintendent's office, Soo Line Railroad, 28th and Central Avenue NE at 2:30 p.m. Friday, July 28, 1978, for formal investigation to determine facts and place your responsibility, if any, in connection with your unauthorized use of credit cards issued to the Soo Line Railroad Co. by Amoco Oil Co. for the purchase of petroleum products on original Invoices 526898, Saturday, March 11, 1978, 962326, Saturday, April 29, 1978, and 136599, not dated, and executing those documents with a buyer's signature for which you had no authorization."

"Bring representative and witnesses if desired.
Acknowledge receipt. H-24."

After one postponement requested by Claimant's Local Chairman, the investigation was held on August 4, 1978.

A careful examination of the transcript of the investigation, which was made a part of the record, and the entire record reveals that Claimant requested Carrier to produce 15 witnesses in his behalf but Carrier declined on the basis that they, the 15 witnesses, would be unable to develop pertinent fact relating to the charges, however, Carrier specifically advised Claimant's representative that he had the right to call his witnesses if he desired. (If Carrier had called the witnesses it would have been liable for expenses incurred and time lost by such witnesses.) Claimant, as a result, chose not to call any witnesses. Claimant was represented at the investigation by his Local Chairman and they were given every opportunity to cross examine Carrier's witnesses extensively. The record further reveals that when Claimant's representative requested a postponement he also requested and received copies of all the documents Carrier contemplated using in the hearing. Based on this examination of the record the Board concludes Claimant was given a fair and impartial hearing.

The Carrier's principle witness in the investigation, a professional "Examiner of Questioned Documents", a hand writing expert fully qualified in this field, testified; "The same hand that authored the comparison specimen submitted to me bearing the signature of James Charles Cayo and/or James C. Cayo authored the signatures appearing on Exhibit #25, Exhibit #26 and Exhibit #27." These exhibits were the three invoices in question. Claimant testified that the signatures used as comparison specimens were his signature.

It should be noted that the invoices did not show, as is normal, the license number of the automobile involved.

The Carrier also contended that the amount of gasoline purchased covered by invoice 136599 in the amount of \$24.80 at .569¢ per gallon represented a volume larger than the capacity of any vehicle used by the Carrier. Invoice 526898 in the amount of \$29.50 does not indicate what was purchased. Claimant owned a pick-up truck having a regular gas tank of 26 gallons and an auxiliary tank of 17 gallons, a total of 43 gallons, which was the amount of gasoline purchased on invoice 136599. Claimant contended the auxiliary tank was rusted out and not serviceable. There was no testimony substantiating his contention.

On August 12, 1978, Carrier addressed a letter to Claimant dismissing him from service.

The Organization argued from the outset as did the Claimant in his brief to this Board that the Carrier's charges of July 24, 1978, were an indictment prejudging Claimant's innocence by using the phrase "your unauthorized use of credit cards". (It should be noted here that as a result of a dispute between Claimant and the Organization over the contents of the submission to this Board, the Organization withdrew from further handling at the request of Claimant.)

Rule 29 of the agreement reads as follows:

"An employee, charged with an offense, shall be furnished with a letter stating the precise charge at the time the charge is made."

Referee Paul C. Dugan in Third Division Award 17066 cited the reasons why specificity is required in a formal investigation notice, when he wrote:

"The purpose of completely informing a person of a charge or charges being assessed against him is to prevent surprise and to permit the accused to properly prepare his defense to the offense or offenses as charged. An accused thus is entitled to rely on the written charges made against him."

There can be no question that Carrier's Letter of July 24, 1978, set forth the "precise charge", in fact, the only criticism would be that it was "too precise" in the use of the word "your" in the phrase "your unauthorized use of credit cards". It certainly was in conformity with the specificity theory of Referee Dugan. The phrase "to determine facts and place your responsibility, if any, ***" cancels out the prejudgmental use of the word "your" in the charges. To further substantiate the Board's findings of a "fair and impartial hearing" and to further substantiate Carrier's conformity with Referee Dugan's theory, Claimant's representative was provided before the hearing with all the documents Carrier contemplated on using in the investigation including the statement from the professional Examiner of Questioned Documents, thus eliminating any possibility of surprises and giving Claimant and his representative every opportunity to prepare a defense. However, the outcome of this dispute does not rise or fall on what may or may not be termed as inappropriate use of the single word "your".

After the hearing/investigation the Organization retained a hand writing expert and attempted to place his report into the record for consideration. The Carrier rejected the evidence as will this Board. [It has been the custom and practice in this industry and upheld by this Board for many years that after the hearing/investigation is closed no further evidence will be considered by either party.] The Organization and Claimant had in their possession the report of Carrier's hand writing witness and if it needed additional time to retain such a witness for an independent report it, the Organization or Claimant, should have requested further postponement of the investigation. Nor will this Board consider or accept as relevant the conduct of Claimant after the investigation. The only matter before this Board is that contained in the Charges which were the subject of the investigation held on August 4, 1978.

The Board finds after careful study of the entire record that the testimony of the expert hand writing witness, Hooten, sustains the charges of the Carrier. The Claim must be 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 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 6th day of January 1982.

