

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24110
Docket Number CL-24202

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9461)
that:

(1) The Carrier violated Rules of the effective Clerk-Telegrapher Agreement when, on May 9, 1980, it arbitrarily and unjustly suspended Operator Clerk O. T. Pagliari from Carrier's service for a period of sixty (60) days, and

(2) Because of such impropriety, Carrier shall now be required to compensate Claimant O. T. Pagliari for all wage losses suffered during the period of suspension beginning May 9, 1980, to and inclusive of July 7, 1980, and clear his service record of the findings.

OPINION OF BOARD: Claimant, O. T. Pagliari, after investigation, was suspended a total of sixty (60) days for insubordinate, quarrelsome and ungentlemanly behavior.

At the time of his suspension, Claimant held a regular assignment as an Operator-Agent in the Buffalo Creek Yard in Buffalo, New York. His regular assignment was 11:00 p.m. to 7:00 a.m., five days per week.

The incident which led to Claimant's suspension occurred on March 16, 1980. At approximately 2:30 a.m. third trick Buffalo Creek Yardmaster Anthony DiLorenzo instructed Claimant to chalk a run of cars which had been delivered by ConRail. Claimant is charged with initially hesitating in following DiLorenzo's directive and then, later, refusing to perform the assignment. He also is accused of cursing at DiLorenzo.

The Organization argues that Claimant was not afforded a full and impartial hearing. It also claims that Carrier failed to establish that Claimant is guilty as charged.

We disagree with the Organization's position here. Nothing in the record indicates that Claimant was deprived of the protections provided in Rule 47. In fact, the transcript does not indicate that Claimant, or his representative, objected to the way in which the hearing was conducted. In any event, Claimant was provided all of his rights by the conducting officer.

As to the merits, even a cursory review of the transcript indicates that Claimant is guilty as charged. Even if the order given to him was, indeed, "superfluous", there is absolutely no excuse for his behavior that day. Clearly, he is guilty as charged.

The final question concerns the appropriateness of the penalty imposed. Given the proven offenses, there is no basis for concluding that the discipline imposed was arbitrary or excessive. As such, the claim is denied in its entirety.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of January 1983.

