

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24296
Docket Number CL-24589

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
(Houston Belt and Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9621) that:

1. Carrier violated the Agreement between the parties when it dismissed Mr. A. R. Williams from its service following investigation held July 17, 1981.
2. Carrier's action was arbitrary, unjust, unreasonable and completely uncalled for as its decision of dismissal was not supported by the record.
3. Carrier shall now be required to compensate Mr. A. R. Williams for all wage loss sustained, beginning Friday, July 24, 1981, and continuing each work day, five days' per week, until returned to service; and shall also be required to expunge the investigation record from his personal file.

OPINION OF BOARD: Claimant was regularly assigned to position of Customer Service Center Clerk, Houston, Texas. On July 14, 1981, he was instructed to report at 9:00 A.M., July 17, 1981, for formal investigation:

"... to develop the facts and place your responsibility, if any, in connection with a report that you were quarrelsome, argumentative and insubordinate to Chief Clerk H. J. Smith when he instructed you to order Car RBOX 18721 from Lastec Plastic Company at approximately 11:55 A.M., July 14, 1981, while working CSC Clerk Job No. 311."

The investigation was conducted as scheduled, following which Claimant was dismissed from Carrier's service on July 24, 1981. A copy of the transcript of the investigation has been made a part of the record.

In the handling of the dispute on the property, the Carrier offered reinstatement on a leniency basis on January 4, 1982, which offer was rejected by the Claimant. On February 16, 1982, Carrier offered reinstatement, with the question of pay for time out of service to be handled by the Organization as deemed necessary. This offer was accepted and Claimant was restored to service on February 25, 1982. The issue before the Board is pay for time lost by Claimant from date of dismissal, July 24, 1981, to February 25, 1982.

We have carefully examined the transcript of the rather lengthy investigation conducted on July 17, 1981. We find that the investigation was conducted in a fair and impartial manner. Claimant was present throughout the investigation, was represented, and he and his representatives were permitted to question or cross-examine witnesses presented by the Carrier.

In its submission to the Board the Organization contends that the letter of charge against Claimant was not "precise" under Rule 25(a) of the Agreement. We find that the charge was sufficiently precise to enable the Claimant and his representatives to prepare a defense, and met the requirements of the Agreement. Furthermore, it is well settled that if exceptions are to be taken to letter of charge, or the manner in which an investigation is conducted, such exceptions must be taken prior to or during the course of the investigation; otherwise, they are deemed waived. There is no requirement that specific rules allegedly violated be set forth in the letter of charge. Houston Belt & Terminal Railway Company Clerk's Bulletin No. 7, referred to in the letter of dismissal, was included in and made a part of the investigation.

In the investigation it was shown that Chief Clerk H. L. Smith was Claimant's immediate supervisor. There was substantial evidence adduced at the investigation, not only from Mr. Smith, but several other clerks as well, in support of the charge against Claimant. Claimant did not promptly comply with the instructions of Mr. Smith, and was argumentative about doing so.

Based on the entire record before the Board, including Claimant's prior record, we find the discipline imposed by the Carrier, which amounted to about seven months suspension, not to be arbitrary, capricious or in bad faith. The claim for pay for time lost by Claimant will 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 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 April 1983.

