

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24476
Docket Number CL-24433

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9554) that:

1. Carrier violated the effective Clerks' Agreement when following an investigation and hearing on March 23, 1981, it arbitrarily and capriciously assessed discipline in the form of a reprimand against the record of Mr. Bennie Lewis.

2. Carrier shall now be required to remove the reprimand from Mr. Bennie Lewis' record and clear his record of the charge placed against him and shall compensate him forty-five (45) minutes pay at the pro rata rate of his position for attending the investigation.

OPINION OF BOARD: An investigation was held on March 23, 1981 to determine whether Claimant was responsible for the ten (10) personal telephone calls made from his residence during the month of February, 1981 and charged to Carrier. Based on the trial record, Carrier concluded that he was guilty of violating General Rules A, J, and R and assessed discipline in the form of a letter of reprimand. This disposition was appealed on both procedural and substantive grounds.

In considering Claimant's petition, particularly his arguments that he was not accorded an objective and impartial appeals review of the hearing officer's disciplinary determination, consistent with Agreement Rule 27, we agree that it was prejudicial to his interests for the official assessing discipline to also serve as the first step grievance appeals review officer.

In numerous cases dealing with procedural due process issues, we consistently held that it was not improper for a Carrier official to assume a multiplicity of roles viz the investigative hearing process when the Grievant's rights are not adversely affected. Thus, we held that it was permissible for a Carrier official to write and serve the investigative notice, conduct the trial investigation and assess discipline based upon the record evidence. These three roles per se, in the absence of palpable trial misconduct, are not viewed as precluding an employee's right to a fair and impartial investigation.

We do look askance, however, when the same hearing officer also serves as a witness since this very action pointedly destroys the credibility of the due process system. In a similar vein, we look askance when the first step grievance appeals officer is also the same person who assessed the discipline.

The independent review and decision at each successive appellate level, whether it is two or three step appeals process, is plainly lacking when the same person judges the discipline he initially assessed. It is a contradiction in terms, which nullifies the hierarchal review process.

In the instant case, we cannot agree that Claimant's appeal was progressed in accordance with the manifest standards of fairness and due process set forth in Rule 27. The grievance appeal should have been reviewed by another person. In Third Division Award No. 8431, which addresses this judicial point, we held in pertinent part that:

"But the Organization's contention of denial of Claimant's right of appeal to the 'next higher officer' must be upheld. The plain meaning of the language of Rule 22(c), as well as the intent of the Railway Labor Act, is that in a case like this a first decision on a claim or grievance by a lower Carrier representative or official may be appealed to one or more higher different officers, including the top or final decision maker." See also Third Division Award No. 9832.

This decisional rationale is controlling herein. We will sustain the claim.

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 violated.

A W A R D

Claim sustained.

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 July 1983.

