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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24530
Docket Number CL-24415

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employees
(
(Central of Georgia Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9535) that:

Carrier violated the Agreement at Gordon, Georgia, when on January 16, 1980, it dismissed Claimant Bobby Hall, III, from the service of the Carrier, account of his alleged failure to perform his duties as Agent properly.

For this violation, the Carrier shall now be required to rescind its prior imposed discipline and return Claimant Hall to the service of the Carrier, with all the rights and benefits to which he is entitled, and with pay for all time lost, beginning January 16, 1980.

OPINION OF BOARD: Claimant had a seniority date of June 6, 1972, on Carrier's Savannah District of the Coastal Division. At the time of the occurrence giving rise to the claim herein, he was an extra agent-operator on the seniority district mentioned, and was filling the vacancy of agent, Gordon, Georgia.

On January 9, 1980, Claimant was instructed to attend a formal investigation at 10:00 a.m., Tuesday, January 15, 1980, on the charges:

"In this investigation you will be charged with your failure to properly process ARCO coal train waybill No. 24420 dated 11-20-79 for freight charges due and for failing to charge detention due for same train which arrived Harllee, Ga., November 22, 1979, at 2:45 a.m., and unloaded last car at 11:45 a.m., for a total of 5 hours detention. This waybill was found by Agent at Gordon, Ga., in desk drawer on January 1, 1980.

Additionally, in this investigation you will be charged with your failure to properly list, date and fill out demurrage records for flat cars with containers furnished Freeport Kaolin Company at Gordon, Ga., during the month of December, 1979, after thorough and explicit instructions had been given you on the proper method and procedure to follow in the listing and assessing of charges for this type car on November 8 and 9, 1979, by P. M. Crawford, Senior Coordinator, Stations, and Terminals, and J. H. Campbell, Trainmaster."

The investigation was conducted as scheduled and a copy of transcript has been made a part of the record. The Claimant was present throughout the investigation and was represented. A review of the transcript shows that the investigation was conducted in a fair and impartial manner. None of Claimant's substantive procedural rights was violated. Following the investigation, Claimant was notified by letter dated January 22, 1980, of his dismissal from the service. The dismissal letter was sent certified mail - return receipt requested. In the handling of the dispute on the property and in its submission to this Board, the Organization contends that the decision was not rendered within the seven-day time limit of Rule C-1-(b), reading:

"A decision will be rendered within seven days after completion of investigation and hearing."

In the on-property handling, the Local Chairman counted January 15 as the first day and contended that January 22 was the eighth day. It is well settled that in computing days under rules such as Rule C-1-(b), the first day is excluded and the last day included. Therefore, seven days from January 15 would be January 22. The Carrier advised the Local Chairman that the dismissal letter was written and dated January 22, 1980, and placed in the U. S. Mail the same date. This seems to be borne out by Employees' Exhibit No. 3, even though the postal workers may have later postmarked the letter January 23, 1980. Rule C-1-(b) does not require that the employee actually receive the notice of discipline within seven days, but that such decision be "rendered" within seven days. See Third Division Award No. 21526, and awards cited therein, as well as Third Division Awards Nos. 13219 and 17588, the latter citing many other awards. We find and hold that the seven-day provision of Rule C-1-(b) was complied with by the Carrier.

We find no proper basis for any contention that the conducting officer badgered the Claimant during the course of the hearing. Further, no such contention was made by Claimant or his representative during the course of the investigation. It is well settled that if exceptions are to be taken to the manner in which an investigation is conducted, such exceptions must be taken during the course of the investigation; otherwise, they are deemed waived.

Carrier's Operating Rule 1151 reads:

"Agents are in charge of the Railway's interests at their stations; of its buildings, sidings, other tracks and grounds within the station limits; of the station appliances; equipment; of its accounts and records; of its material and supplies; of all cars at the station except in trains; of the receipt, care, forwarding and delivery of baggage and freight; of the sale of tickets; of the collection of station revenues; of the remittance or deposit of money; of such disbursements thereof as may be properly authorized; of all station employees and of other employees while at the station, so far as it relates to their conduct or to the station work.

Agents will also have charge of such other matters as may arise in connection with the station management or may be assigned to them by proper authority.

Agents must report to Superintendent any matters affecting the interests of the Railway."

Carrier's Operating Rule 1175 reads:

"Agents must make prescribed reports as required by proper authority."

Upon review, we find substantial evidence in the investigation to support the charges against the Claimant. While there were some conflicts in the evidence adduced, it is not the function of this Board to weigh evidence, attempt to resolve the conflicts therein, or to pass upon the credibility of witnesses. Such functions are reserved to the Carrier. There was substantial evidence that Claimant did fail to properly perform his duties while filling the agent's position at Gordon, Ga. His actions, coupled with his prior record, which was far from satisfactory, and which was referred to in the handling on the property (Carrier's Exhibit "L") justified the discipline imposed and there is no proper basis for this Board to interfere.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute the notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of October, 1983.