

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24532
Docket Number SG-24532

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Long Island Rail Road

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road:

Case No. SG-11-81

Appeal on behalf of E. K. Meinking, Jr., who was dismissed by notice dated March 27, 1981."

OPINION OF BOARD: Claimant, employed by the Carrier as a signalman, with service date of January 22, 1970, was notified by letter dated March 10, 1981:

"You are to arrange to be present at a trial to be held in Room 207 at the J. A. Cassidy, Sr., Training Center, Jamaica, New York, at 10:00 a.m., on March 16, 1981, in connection with the following charge:

'On February 27, 1981 at approximately 5:00 pm while you were driving LIRR Truck V05C without authorization, you caused a vehicular accident between Truck V05C and a parked vehicle on Merrick Boulevard in Springfield Gardens, New York, and, after the accident, you immediately left the scene. Furthermore, you failed to report the accident to the Carrier and did provide false and misleading information regarding damage to Truck V05C.'

You may, if you so choose, be accompanied by a representative of your own choosing, subject to the terms of the applicable scheduled agreement, without expense to the Company.

You may produce witnesses in your behalf, without expense to the Company and you or your representative may cross-examine these witnesses.

You will be expected to be present throughout the entire trial."

The trial, or investigation, was held as scheduled. It was developed that the March 10, 1981, notice was sent by certified mail to Claimant's current address, and the Carrier introduced in the trial the certified receipt. Claimant contended that he did not receive the letter as:

"My landlord does not always bring the mail around to the back of the house."

He stated, however, that he saw a copy of the letter that was sent to the General Chairman and that he was ready to proceed. The Board finds that the Carrier did everything that could reasonably be expected of it to notify Claimant of the pending trial.

At the beginning of the trial, the General Chairman protested that the letter of March 10, 1981, was outside the ten day provision of the applicable discipline rule, which provides in part:

"... No charge shall be made that involves any offense of which the Company has had actual knowledge 10 calendar days or more."

The Carrier maintains that it had no knowledge of the accident until March 2, 1981 and that the letter of March 10, 1981, was within the 10-day provision. The record shows that on March 2, 1981, Claimant submitted a statement to the Company to the effect that he found a Signal Department truck in a damaged condition at 8:05 A.M. that morning. The Carrier maintains that this was the first knowledge that it had of the truck being involved in an accident. There was no evidence to the contrary. In fact, Claimant's statement of March 2, 1981, was introduced at the trial. We find that the notice to the Claimant dated March 10, 1981, was within the 10-day provision of the Discipline Rule.

Various other objections were raised by the General Chairman during the course of the investigation. One was that the Carrier failed to call all witnesses. The Claimant, or the Organization, could have called witnesses if they desired. In fact, at the beginning of the trial, the General Chairman stated:

"At this time, the Organization reserved (sic) the right to call witnesses at a future date."

Complaint is also made of Carrier's failure to separate witnesses. While the record shows that for a brief period two witnesses were in the room at the same time, the conducting officer stated it was for the purpose of attempting to clear up an apparent discrepancy. We have been referred to no rule requiring that witnesses be sequestered at all times. In Award No. 15025 the Board held:

"There is no such language or terms in the Agreement ... that requires the exclusion of witnesses from the hearing room during the testimony of other witnesses."

The Organization also complains:

- (4) Carrier officer acting in a dual capacity.
- (5) Conducting Officer showing bias.
- (6) Introduction of statements by persons not present at trial.
- (7) Failure of trial officer to permit the General Chairman to develop and complete his defense.

We have carefully examined all of these alleged irregularities and find no proper basis for any of them. The trial, or investigation, was long and drawn out. In our opinion many irrelevant issues were raised and discussed at length. While the trial, or investigation, may not have been exemplary, we find that Claimant did have a full, complete and impartial hearing.

Based upon a careful review of the transcript of the trial, we find that substantial evidence was adduced by the Carrier in support of the charge against the Claimant. While we recognize that there were conflicts in the testimony, particularly as between Claimant and other witnesses, it is well settled that this Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing officer. We do not consider Carrier's action in imposing the discipline that it did to be arbitrary, capricious, or in bad faith.

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

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: *Nancy J. Dever*
Nancy J. Dever - Executive Secretary

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

