

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24696
Docket Number MW-24688

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation (former Penn
(Central Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The discipline (reprimand) imposed upon Acting Foreman P. R. Vincent for alleged violation of "Rule T" and for alleged insubordination of July 12, 1979 was without just and sufficient cause and on the basis of unproven charges (System Docket 546).

(2) The aforesaid reprimand shall be expunged from the claimant's record.

OPINION OF BOARD: An investigation was held on July 26, 1979 to determine whether Claimant was improperly absent from his assignment on July 12, 1979 between the hours of 1:00 P.M. and 2:00 P.M., and whether he was insubordinate to Assistant Supervisor R. W. Benner when he allegedly refused to answer questions regarding the asserted absence. A formal reprimand was assessed against his record on September 17, 1979 and this penalty disposition was appealed to the Manager, Labor Relations. On October 31, 1979, this official sustained the initial disciplinary determination and the General Chairman requested that a joint submission be prepared for an appeal to the Senior Director, Labor Relations. The dispute not being resolved at this level was appealed to this Board in accordance with the applicable provisions of the controlling Agreement.

In defense of his petition, Claimant contends that he delivered time cards to the Canton office which was a routine and established chore. He argues that Assistant Supervisor Benner was aware of this practice which necessitated his leaving the work situs for a limited period of time and avers that Mr. Benner's unexpected questioning of his whereabouts totally surprised him. He maintains that he was not insubordinate when he did not promptly respond to the Assistant Supervisor's questions; he was merely regaining his composure. He asserts that he properly informed Mr. Benner of his whereabouts and activities, and argues that his behavior was not violative of Rule T of the Rules of Conducting Transportation or the correlative charge that he was insubordinate.

Carrier contends that he left his assigned work location without proper authority and was visibly insubordinate when he failed to answer Mr. Benner's questions. It argues that the investigative record, particularly his testimony regarding his whereabouts, is self serving and unpersuasive and lacks credibility or corroboration. It asserts that despite the conflict in testimony between Claimant and the Assistant Supervisor regarding the incident, Mr. Benner's version is more plausible and deserving of positive consideration. It maintains that Claimant never apprised Mr. Benner of his whereabouts between 1:00 P.M. and 2:00 P.M. nor did he answer the Assistant Supervisor's validly posed questions.

In our review of this case, we agree with Carrier that Claimant was provided a fair and impartial investigation, but we cannot agree with Carrier that the record evidence fully supports its findings and disciplinary determination. We concur, of course, with Carrier that in cases where testimony is conflicted, our decisional law weighs heavily in favor of the view that the hearing officer is usually best positioned to evaluate objectively divergent testimony, but we cannot conclude herein that we have this classic dichotomy. The type of situational corroboration which aids hearing officers discern testimonial veracity is not present here. Instead, we are confronted with a situation where the testimony of the accuser and the accused are in direct conflict, and we lack the necessary ancillary proofs to support one position or the other. It is not a question of whether the Assistant Supervisor is more credible because he apparently lacks any insidious motivation, it is a question of the quantum of proof needed to sustain a disciplinary action. The evidence in this record is less than the normative standard of clear and convincing proof and as such, we are compelled to sustain the petition.

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 respective 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

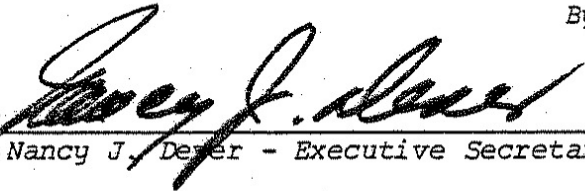
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984