

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24774  
Docket Number SG-24709

Edward L. Suntrup, Referee

(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of  
Railroad Signalmen on the Illinois Central Gulf Railroad

Carrier file: 135-296-18 Spl. Case No. 382 Sign.

On behalf of Traveling Maintainer J. N. Etchason, who was suspended for thirty days, June 29-July 28, 1981, for all compensation and benefits which would have accrued to him had he not been suspended.

OPINION OF BOARD: By letter dated June 8, 1981 the Claimant, Traveling Maintainer J. N. Etchason, with seniority date of April 26, 1943, was notified by the Carrier to attend a formal investigation on June 12, 1981. Mr. Etchason was charged with allegedly taking an unauthorized person with him on company tracks and with using discourteous and quarrelsome language toward Deputy Sheriff R. W. Jones on May 28, 1981 in the vicinity of Sullivan, Indiana. The Claimant was also charged with the alleged use of vulgar and profane language while speaking to the same deputy sheriff by telephone on June 1, 1981. As a result of the investigation the Claimant was notified by letter dated June 19, 1981 that he had been found guilty of using discourteous, quarrelsome, vulgar and profane language toward Deputy Sheriff Jones on May 28 and June 1, 1981 and that he was being assessed a thirty (30) calendar day suspension. After appeal was made on property up to and including the highest Carrier Officer designated to hear such appeals, this case is now before the National Railroad Adjustment Board.

As a preliminary point the Board underlines that it will not consider material which was not submitted during the handling of a case on property. This firmly established doctrine, codified by Circular No. 1, has been articulated in numerous Awards of this Division (Third Division Awards 20841, 21463, 22054 inter alia). All facts and/or lines of reasoning used by either party in their ex parte submission, therefore, which were not part of the record when the case was handled on property will not be considered.

On procedural grounds the Organization requests that the claim be sustained because of contravention by the Carrier of current Agreement Rule 35(a) since the Carrier failed to advise the Claimant of the investigation 72 hours prior to when it was held. Such request is rejected by the Board. Rules such as 35(a) do not contemplate a technical loophole as a long line of Awards of the Board, too numerous to mention, establish but such Rules are to serve as guarantees of sufficient time for preparation of defense by the Claimant. By the calculations of the Organization the notice was received by the Claimant some 66-68 hours before the hearing, and by its own actions the Organization refused to postpone the hearing in order to have more time for additional preparation when it was offered this option by the hearing officer at the beginning of the investigation which took place on June 12, 1981.

On merits, the charge that the Claimant allegedly took an unauthorized person with him on company tracks was dismissed by the Carrier. With respect to the alleged May 28, 1981 incident, a review of the record shows that at about 10:00 a.m. on that date Deputy Sheriff R. W. Jones saw a car parked next to the Carrier's tracks by U.S. Highway 41 near Sullivan, Indiana. After pulling off the highway and informing the Claimant that he had stopped to ascertain if his vehicle was parked too close to the tracks, and because the officer had not recognized it as a railroad vehicle, a written statement by this deputy sheriff which was introduced into the hearing stated that Mr. Etchason then became belligerent and overbearing. In the hearing the Claimant did not deny that he was "probably not" very polite to the police officer on this occasion because the officer was "staring" at his car.

The June 1, 1981 alleged incident presents the Board with both a credibility issue and one whereby determination of the applicability of Rule I of the Carrier Rules for the Maintenance of Way and Structures must be established. With respect to the former, written statements by both Deputy Sheriff Jones and Sheriff R. E. Hiatt to the effect that the Claimant telephoned and used loud and vulgar language to the deputy on this date is denied in hearing by both the Claimant and his wife who appeared as witness. By long established precedent the Board cannot set itself up as a trier of fact with respect to patently conflicting evidence (Third Division Awards 16281, 21238, 21612 *inter alia*). Accepting the probity of Carrier evidence here, however, does not *de facto* warrant conclusion of Rule I violation. Rule I speaks to the deportment of employees. At the time when this telephone call was made the Claimant was neither on property nor on duty. The Board is aware that a rule of the nature of Rule I may be extended, by interpretation, to off-duty behavior in idiosyncratic circumstances. Nowhere in the record on property, however, does the Carrier frame an argument with respect to the reputation of the Carrier because of this alleged incident.

In discipline cases the Carrier must show cause, as moving party, that the discipline assessed is both merited and reasonable. On merits, the test of substantial evidence has been met with respect to the May 28, 1981 incident. Substantial evidence is defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229). Since it is the determination of the Board, therefore, that it is the May 28, 1981 incident alone, and not that also of June 1, 1981 on which the quantum of discipline in the instant case must be reasonably assessed, it rules that the thirty (30) day suspension be reduced to a fifteen (15) calendar day suspension and that the Claimant be made whole for all compensation and benefits which would have accrued to him during the other fifteen (15) days.

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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1984