

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24807
Docket Number SG-24599

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claims of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and North Western Transportation Company:

Claim No. 1 Carrier file: D-9-1-75

(a) On April 7, 1981 the carrier violated the current Signalmen's Agreement particularly Rule 60 during investigation of Signal Maintainer C. A. Shannon, and subsequent discipline assessed him dated April 10, 1981 and received in this office on April 13, 1981.

(b) Carrier now be required to clear Mr. Shannon's record of the discipline issued which was 30 days actual suspension beginning April 14, 1981, and restore him to service with all rights unimpaired.

Claim No. 2 Carrier file: D-9-1-74

(a) On April 7, 1981 the carrier violated the current Signalmen's Agreement, particular Rule 60 during the investigation of Signal Maintainer C. A. Shannon, and subsequent discipline assessed to him dated April 10, 1981 and received in this office on April 13, 1981.

(b) Carrier now be required to compensate Mr. C. A. Shannon the actual time lost which was suspension from service, clear his record of the discipline and restore him to his regular position of Signal Maintainer at Dixon, Ill. with all rights unimpaired."

OPINION OF BOARD: Two separate investigations were held at the Larry S. Provo Training Center Building, West Chicago, Illinois on April 7, 1981. One investigation involved a determination as to whether Claimant was improperly absent from duty on March 18, 1981, while the other investigation involved a determination as to whether Claimant failed to make and record Federal Railroad Administration - Department of Transportation tests. Based upon the investigative record, he was assessed a thirty (30) day suspension for the first charge and dismissed from service for the second charge. These dispositions were appealed, consistent with the applicable provisions of the Controlling Agreement.

In defense of his petition on the first claim, Claimant argues that it was not standard practice to hold an investigation when an employee did not contact his supervisor personally. He asserts that Carrier did not treat absences in a uniform manner as evidenced by its failure to hold an investigation when another employe was absent for over thirty (30) days. He contends that he called his supervisor's office twice on March 18, 1981,

but he was unable to establish contact since the telephone line was busy on his first call and he evidently rang the wrong number when he made the second call. He avers that his superior was informed of his absence when his assistant apprised the superior of his absence. He also maintains that the investigation was procedurally biased since the superior who preferred the charges testified as a witness and issued the disciplinary notice.

With respect to the second claim, Claimant contends that he was certain that he made the FRA-DOT tests and asserts that the FRA Inspector who was on the territory in 1980 did not report any violations. He avers that Carrier violated Rule 60 when it did not hold the investigation within seven (7) days of the time information of the alleged offense reached the superior. Moreover, he argues that in view of the fact that the Signal Supervisor and the Manager, Communications & Signals played multiple roles in both investigations, the hearing process was inherently biased, contrary to the due process requirements of the Controlling Agreement and the judicial holdings of the National Railroad Adjustment Board.

Carrier contends he was properly disciplined for the first charge since he was aware and acknowledged that his instructions were that he would contact the Signal Supervisor personally if he wanted to lay off. It argues that he was mindful of this clear specific requirement and he failed to comply with it. It avers that a thirty (30) day suspension was not inappropriate nor excessive when his past disciplinary record is considered.

As to the second specification, Carrier argues that it complied with the time limit requirements of Rule 60 since it was not aware that Claimant did not file the FRA-DOT reports until shortly before the hearing. It asserts that the Manager, Communications & Signals found that several reports were missing for the Dixon, Illinois signal maintenance territory which included the monthly signal maintainer test reports for April, May, June, July, August, November and December, 1980, the quarterly No. 103 and 104 reports for the second and fourth quarters of 1980, the semi-annual search light report for search light signals was missing for all of 1980 and the semi-annual report for the AC-ATC test loop section was also missing for all of 1980. In addition, a monthly ground test form was missing. Carrier argues that the completion of all these tests and forms is required by the regulations of the Federal Railroad Administration and charges Claimant failed to comply with his responsibilities. It maintains that the discipline imposed was neither unreasonable nor an abuse of managerial discretion when Claimant's employment record shows that he previously served a sixty (60) day suspension for payroll falsification and was dismissed, albeit reinstated fifteen (15) months later, for a Rule G violation in 1971. It asserts that the record evidence clearly establishes that he failed to make and record the FRA-DOT tests and discipline was justified.

In our review of this case, we concur with Carrier on both charges. Careful examination of the investigative transcript shows that Claimant failed to comply with the reporting requirements attendant to absences and was properly disciplined. We find no mitigative circumstances that would warrant a different assessment or any evidence that the conduct of the investigative trial was inherently or presumptively biased. Claimant was afforded a fair and reasonable

opportunity to prepare and present a competent defense. He was neither precluded from cross-examining the adversarial witness nor estopped from fully developing his own position.

As to the second charge, we do not find that Claimant has shown Carrier violated the seven (7) day requirement set forth in Rule 60. Claimant was obligated to prove unmistakably that Carrier was aware of the alleged offense within seven (7) days of its occurrence or within seven (7) days after the information of the alleged offense had reached the superior. The record does not contain such proof.

On the other hand, the investigative record shows that Claimant did not file certain FRA reports and such serious omissions are valid ground for discipline. While we are reluctant to modify a disciplinary penalty that has been predicated upon a solid evidentiary record, we believe that dismissal in this instance is excessive. To some extent Carrier should have been monitoring the filing of these reports on a more regularized basis, but its laxness does not excuse Claimant's deportment. We will reinstate Claimant to his position without back pay taking into consideration his thirty two (32) years of service. However, we hasten to add that we will not tolerate at all any recidivist behavior, in the future, and his reinstatement herein is on a last chance basis.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1984