

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25118
Docket Number SG-25260

George S. Roukis, Referee

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

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

(a) Carrier violated the current Signalmen's Agreement dated January 1, 1982, as amended, in that Mr. R. Kulpa charged Mr. R. Haywood with insubordination, as a foregone fact. Mr. Crubaugh the investigating officer on page 33 of this investigation tried to bring in the Carrier's book of General Regulations and Safety Rules, dated June 1, 1967. This is another violation of Rule 53 of the current agreement. This was not mentioned in the original charge notice, as Board Awards have held that they should be.

(b) Carrier now be required to remove said discipline from Mr. Haywood's record, and reimburse him for the 15 days pay he lost while being out of service. [General Chairman file: C&NW-G-AV-6, Carrier file: D-9-17-61]

OPINION OF BOARD: An investigation was held on April 5, 1982 to determine whether Claimant was insubordinate when he allegedly refused to carry out Signal Supervisor R. Kulpa's instructions on March 31, 1982. Based on the investigative record, Carrier concluded that Claimant failed to implement the instructions given to him at 7:00 A.M. on the aforesaid date which included bonding the fouling on the east side of the tracks at the Searle Avenue crossing, and he was suspended from service for ten (10) days. Since Claimant had a previous five (5) days deferred assessed against his personal record, the instant suspension activated the deferred assessment and he served an actual fifteen (15) days suspension.

In defense of his petition, Claimant raises both procedural and substantive objections. Procedurally, he contends that the hearing officer did not conduct a fair and impartial investigation as evidenced by the type of questions posed to Carrier witnesses, and argues that the belated injection of a specific rule violation that was not referenced in the Notice of Investigation, de facto prejudiced his ability to prepare an intelligent and relevant defense. He contends that Supervisor Kulpa was harassing him for being an adverse witness in a matter involving another employe and avers implicitly that he was inappropriately assigned to a maintainers position, notwithstanding his restriction to gang work. Moreover, he argues that he was improperly removed from service prior to the investigation since he was not a danger to Carrier's operations.

As to the substantive merits of the dispute, Claimant asserts that he did not perceive Supervisor Kulpa's instructions regarding the bonding at Searle Avenue as a direct order or as an explicit indication that it had exclusive work priority. He implies that he was performing work of an emergency nature at Grayland. By his own record testimony, he stated:

"He didn't give me any specific instructions. Even after I got off the phone, I even turned to the Assistant and said that I talked to Rich for fifteen minutes on the phone and I still don't understand him."
(Page 19 - Record Transcript)

He maintains that he would have performed the bonding work later that day, but was prevented from doing so when he was removed from service.

Carrier contends that he was afforded an impartial investigation and was adequately informed as to the nature and focus of the hearing. In effect, it asserts that the Notice of Investigation clearly apprised him that his alleged insubordination on March 18, 1982 would be the subject of investigation. It argues that the Agreement rule relating to investigation and discipline permits the employer to remove an employee from service pending investigation, and avers that his disregarding of the bonding instructions allowed an unsafe condition to exist. Carrier maintains that the record evidence unmistakably shows that he did not comply with Supervisor Kulpa's direct instructions and his behavior was a continuation of his past indifference to supervisory directives. It argues that contrary to Claimant's assertion that he was working to correct an emergency situation at the Grayland situs, an emergency did not exist at Grayland and his sum total deportment was plainly insubordinate.

In our review of this case we concur with Carrier's position that he was provided an impartial investigation on April 5, 1982; and he was insubordinate on March 31, 1982. Careful analysis of the investigative record does not reveal that he was denied due process protections, nor was he disadvantaged when it was noted at the hearing that he violated Rule 7 of the General Regulations and Safety Rules. This Carrier rule relates to insubordinate conduct and the March 31, 1984 Notice of Investigation unequivocally noted that the hearing would center on determining his insubordinate actions. In fact, it specified his alleged failure to carry out his duties at Searle Avenue. Claimant was in no way precluded from conducting a thoughtful affirmative defense, nor placed in a precarious position.

Moreover, based on our assessment of the substantive arguments, we find that he was clearly insubordinate on March 31, 1982. The corroborative statements of Company witnesses D. Basile and R. Free, particularly D. Basile's testimony that he heard Supervisor Kulpa instruct Claimant that the first thing to do that morning before anything else, was the bonding at Searle Avenue, persuades us that an explicit order was given to him. Claimant had testified that he told his Assistant after the phone call with Supervisor Kulpa that he still did not understand Supervisor Kulpa, but this statement was not further substantiated at the hearing by the Assistant. This person, in fact, was not called to testify at the investigation. When Claimant's testimony and account of his actions are weighed carefully against the record testimony of Supervisor Kulpa and the two other Carrier witnesses and this evidence is evaluated within the context of Claimant's past disciplinary record, this Board, of necessity, must conclude that he was insubordinate on March 31, 1982.

On the other hand, we are not convinced that his suspension prior to the investigative hearing was predicated upon defensible grounds since his continued presence did not pose an imminent danger to Carrier's rail operations or other employees. While Carrier has the right to remove employees, this right is not unrestricted and must be exercised with judgment and balance. It is not a license for peremptory removals. Accordingly, since we have found Claimant guilty of the insubordination charge, but we have found Carrier's removal action to be inconsistent with the intent and spirit of the Investigation and Discipline Rule, we will direct that his suspension from March 31, 1982 through April 4, 1982 be rescinded and that he be made whole for this time. The Board will uphold the remainder of the suspension. Claimant is warned that this Board will not hesitate to affirm a disciplinary action taken for a similar substantiated infraction.

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 9th day of November 1984.