

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25375
Docket Number CL-24497

W. S. Coleman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employees
(
(Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9581) that:

"1. Carrier violated the effective Clerk-Telegrapher Agreement when, on March 19, 1980, it imposed discipline of ten (10) days suspension from service upon Clerk-Operator E. E. Eberts following an investigation held on February 29, 1980, and

2. As a result of such action, Carrier shall now be required to reimburse Claimant E. E. Eberts eight (8) hours' pay for the dates of March 25, 28, 29, 30, 31 and April 1, 1980, account his suspension from Carrier's service March 25 through April 1, 1980."

OPINION OF BOARD: On February 26, 1980, Claimant Edgar E. Eberts, a Clerk-Operator working at the DO Telegraph Office in Chillicothe, Ohio, was instructed to attend an investigation into charges filed against him in conjunction with his responsibility in the loss of a Carrier radio and his subsequent failure to report it missing for eight days. As a result of that investigation, Claimant was assessed a 10 days' actual suspension.

Carrier maintains that Claimant received a fair and impartial investigation and was not denied due process under the Agreement, as the Organization alleges, because the charge letter did not contain a specific Rule violation. Further, there was ample evidence adduced to support Claimant's guilt and to prove Claimant's negligence in the loss of a \$2,000 radio. Claimant professed ignorance concerning the proper handling of radios lacks credibility and is not a proper excuse. Claimant's delay in reporting the loss impeded Carrier's efforts to locate the missing item. It must be concluded that the discipline imposed was lenient under the circumstances.

The Organization argues that Claimant, a twenty-year employe with an impeccable record, was not responsible for the radio in question or for its disappearance and that he was not aware of the Rule under which he was charged. Claimant was denied basic guarantees of due process, under the Agreement, and his discipline should be rescinded.

The transcript of the investigation has been made a part of the record of this case. A review of the transcript reveals that Claimant was afforded a full and impartial hearing and that he was guilty as charged. The original charge letter issued to Claimant provided him with ample opportunity to develop a defense and met the test of specificity required by Agreement. The allegation that Claimant was denied due process, under the Agreement, because the discipline letter referred to Radio Operating Rule 61 while the charge notice did not, and that he was ultimately charged with the violation of a Rule with which he was unacquainted is not persuasive. Both documents refer to the same infraction and it cannot be alleged that Claimant was subject to two different sets of charges. Further, this Board cannot believe that Claimant, an employe of twenty years, would not know that he was required to exercise due care in regard to Carrier equipment with which he was entrusted.

In the final analysis, the Hearing Officer concluded, based on a preponderance of substantial evidence, that Claimant did bear a responsibility in the loss of the radio and did fail to report its loss in a timely fashion. This Board finds no reason to dispute that decision. Given that the discipline imposed is neither arbitrary nor capricious, the penalty assessed must stand.

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 Employes involved in this dispute are respectively Carrier and Employes 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 - Executive Secretary

Dated at Chicago, Illinois this 15th day of April 1985.