

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25381
Docket Number CL-24515

W. S. Coleman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9566) that:

(1) Carrier violated the Agreement between the Parties when, on July 26, 1979, it imposed discipline of thirty (30) days suspension from service upon Clerk-Checker R. L. Byrd as a result of investigation conducted on July 18, 1979, and

(2) As a result of this impropriety, Carrier shall now be required to reimburse Claimant R. L. Byrd for lost wages in connection with such suspension from Carrier's service, July 30 through August 28, 1979, and that his record be cleared of involved charges and discipline.

OPINION OF BOARD: Claimant R. L. Byrd was a Clerk-Checker on the 7:59 A.M. to 3:59 P.M. shift at Carrier's Baltimore Terminal Services Center in Hothorpe, Maryland. In two separate notices, Claimant was charged with failure to report at the proper time and place on June 23, 1979, and June 28, 1979. Both investigations were combined into one and a hearing was held on July 18, 1979. As a result, Claimant was found guilty as charged and assessed a thirty-day suspension.

In its Submission to this Board, Carrier maintained the Claimant was afforded a fair and impartial hearing, the evidence adduced therein supported a finding of guilt, and the discipline imposed was appropriate. Claimant failed to give advance notice of his absence or provide a reasonable explanation for not appearing at work. Although Claimant argued that there were extenuating circumstances, he failed to produce evidence of his illness. Given Claimant's guilt and the presence of four prior assessments of discipline for the same offense, the discipline should not be disturbed.

The Organization argues that Claimant was denied due process in that one Carrier representative conducted the investigation and another assessed discipline. In addition, Claimant was denied the right to have his claim considered independently at each appellate level. The individual hearing the first appeal had previously given his approval to the initial Carrier decision. Further, Carrier failed to consider important extenuating circumstances in light of the impact of Claimant's infraction on its operation.

The Board has reviewed the entire record of this case and concludes that Claimant was in no way denied due process under the Agreement. It is not uncommon in the industry for one Carrier representative to conduct an investigatory hearing and another to assess discipline. At the same time, there is no real showing that Claimant's right to an appeal was prejudiced by the Division Manager's earlier comment about the Hearing Officer's recommendations. As noted in its Submission, Carrier appears to recognize that at the appellate level, the Division Manager was required to review objectively the new arguments made by the Organization and there is no substantial evidence presented to indicate that that was not done.

The Hearing Officer ultimately concluded that Claimant was guilty as charged and this Board can find no reason to dispute that finding. Certainly, allowances must be made, as the Organization suggests, for employees who are ill; that is why there are special provisions within the Agreement that allow employees to obtain permission to be absent under such conditions. Claimant was aware of those provisions and presented no evidence to show that there were any special circumstances that prevented him from giving Carrier proper notification of his intended absence.

Given the fact that the two incidents in question followed on the heels of four prior assessments of discipline for the same offense, it cannot be concluded that a 30-day suspension is arbitrary or capricious.

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 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.