

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25552

Docket Number CL-25640

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
(Freight Handlers, Express and Station Employees  
(  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9841)  
that:

1. The Chicago and North Western Transportation Company violated the terms and provisions of Rule 21 of the Agreement when they preferred charges on Mr. Sherman Redmond on October 28, 1982, conducted an investigation on these charges on November 22, 1982, and after the conclusion of the investigation dismissed him from employment effective December 21, 1982.

2. The Chicago and North Western Transportation Company shall now be required to restore Mr. Redmond to service with full seniority and fringe benefits and pay him for all wage losses sustained as provided in paragraph (c) of Rule 21.

OPINION OF BOARD: The record shows that during the early morning hours of October 11, 1982, Claimant approached his superior, the Assistant Agent at Proviso, and informed him that it was his intention to leave his assignment early to go home, giving the explanation that he was "emotionally upset." When the Assistant Agent attempted to determine the cause of Claimant's emotional state, the Claimant refused to discuss the matter, his only comment being that he did not come to work to fight, and proceeded to leave the property.

The next day Claimant allegedly made statements to the Agent and to the Assistant Agent that he had been involved in a physical altercation with another employe in the Proviso cafeteria at about 1:40 A.M., October 11, 1982, and that he received a stab wound in his left hand during the altercation, which was inflicted by the other employe with a ball-point pen. Claimant was instructed to prepare an accident report, Form 148, which he completed indicating that he was stabbed with a pen while trying to take it from the other employe during the confrontation. The Accident Report Form was signed by the Claimant as a correct statement.

The Carrier conducted three investigations, the first relating to Claimant's departure from his assignment without proper authority. The second investigation, conducted on October 29, 1982, involved the Claimant and the employe with whom he allegedly had engaged in the altercation. In the second investigation Claimant was asked if the other employe stabbed him in the hand with a ball-point pen and Claimant answered "Not to my knowledge." He further testified that he did not know how the injury occurred, and denied that he had a fight or altercation with the other employe. On the basis of Claimant's testimony in the October 29 investigation, no discipline was assessed. However, on the same date, October 29, 1982, Claimant was instructed to appear for another investigation, scheduled for November 4, 1982, on the charge:

"Your responsibility in connection with your violation of Rule 8. Specifically, falsifying information regarding an injury you allegedly received on the morning of October 11, 1982:

1. Falsifying Form 148 which you prepared on October 12, 1982, wherein you indicated that you were involved in a physical confrontation with another employee during which you sustained an injury to your hand.
2. Making false verbal statements to Mr. I. B. Sachack at approximately 7:15 A.M. on October 12, 1982, wherein you indicated that you were involved in a physical confrontation with another employee during which you sustained an injury to your hand.
3. Making a false verbal statement to Mr. R. V. Meder, Assistant Agent at approximately 7:45 A.M. on October 12, 1982 wherein you indicated that you were involved in a physical confrontation with another employee during which you sustained an injury to your hand."

The investigation was postponed and conducted on November 22, 1982, at which time Claimant was present and represented. In the investigation conducted on November 22, 1982, the Agent and the Assistant Agent at Proviso testified about what Claimant had told them on the morning of October 12, 1982, about a confrontation that had taken place with another employee in the Proviso lunchroom; how he had sustained an injury to the palm of his hand from a ball-point pen that the other employee involved was pointing at him, and that Claimant was instructed to complete Accident Form 148, which he did with the help of the Assistant Agent.

Objection was raised by Claimant's representative that the charge and testimony given were about the same as given in the prior investigation. We do not consider such objection valid. The prior investigation resulted from Claimant having engaged in the altercation. The investigation of November 22, 1982, concerned Claimant allegedly having given false information in his conversation with the Agent and the Assistant Agent and with having falsified Accident Form 148. Two separate offenses were involved. The handling did not constitute double jeopardy or deny Claimant due process.

In the investigation of November 22, 1982, Claimant stated that he did not remember his prior conversations on October 12 with the Agent and the Assistant Agent, but did state that Accident Form 148 previously filled out by him was not accurate.

A copy of the investigation conducted on October 29, 1982, was entered into and made a part of the record of the November 22, 1982, investigation, over the objection of Claimant's representative. Ordinarily, we would look with askance on such procedure. Each investigation should stand on its own. However, in the present case we attach no significance to the October 29, 1982, investigation as there was substantial evidence in the November 22, 1982, investigation alone to support the charge of October 29, 1982, against the Claimant. Claimant was guilty of a serious offense. The Carrier is entitled to know the truth concerning alleged personal injuries or accidents, and such information can only be obtained from the employes involved.

We also note that Claimant's prior discipline record was far from satisfactory. His actions in the present case, coupled with his prior record, fully warranted dismissal.

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

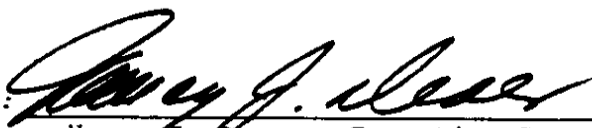
That the Agreement was not violated.

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 26th day of July 1985.