

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25838
Docket Number SG-25473

Nicholas Duda, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(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) On or about August 10, 1982, the carrier held an investigation on Mr. R. C. Larsen, for his alleged charge of violation of Rule "G" on July 27, 1982.

(b) Carrier now be required to reinstate Mr. Larsen with all seniority rights, insurance benefits, vacation benefits, and compensate him for all lost time from the date he received his dismissal notice, which was August 18, 1982.

[Carrier File No. D-9-17-62. General Chairman's File No. C&NW-G-AV-7]

OPINION OF BOARD: On July 27, 1982 Claimant was employed by Carrier as a Signalman in the Signal Shop at Proviso Yard. He worked from 7:00 a.m. until 3:30 p.m. that day. Shortly after 9:00 p.m., while walking near the Carrier's railroad tracks at Elmhurst, Illinois, he was struck by an oncoming freight train and injured.

On July 31, 1982, Claimant received a written directive:

"To appear for a formal investigation as indicated below:

Date: August 2, 1982

Charge: Violation of Rule 'G' of CNW General Regulations and Safety Rules dated June 1, 1967 on July 27, 1982."

Claimant, who was in the hospital, requested postponement. The Carrier rescheduled the investigation for August 10, 1982. After the investigation on that day, the Carrier notified Claimant that he was dismissed from the service of the Company by written notice dated August 16, 1982.

The Organization seeks to overturn the dismissal by relying on several alleged procedural violations of Rule 53 and on the claim that Claimant had not violated Rule G on July 27, 1982.

THE ALLEGED VIOLATION OF RULE 53 OF THE AGREEMENT BETWEEN THE PARTIES

As required, prior to the investigation Claimant and the Local Chairman were notified of the nature of the investigation and the charges against Claimant. The postponement and rescheduling of the hearing were made at Claimant's request because he was in the hospital. Claimant participated in that hearing as did his representatives.

Contrary to the Organization claim, the notice of investigation did not "presuppose Claimant's guilt rather than an inquiry into the incident." The notice merely stated that the investigation would consider the charge that he had violated Rule G.

Rule 53 specifies that "the employe will be advised of Supervisor's decision, in writing, within seven (7) days after completion of investigation, with copy to the Local Chairman". The written notice of dismissal was signed by C. J. Nelson, the Assistant Chief Engineer - Signals, and delivered to Claimant by Mr. Shepherd. Mr. Shepherd was Claimant's direct Supervisor and Mr. Shepherd reported to Mr. Nelson who supervised both Shepherd and Larsen. Contrary to the Union's contention about the supervisory aspect, there was nothing improper in the way Claimant was advised of the decision.

In its Ex Parte Submission, the Organization contended that Claimant did not receive the notice of dismissal until August 18, 1982, which was more than seven (7) days after the investigation day. If shown, that fact would be a violation of Rule 53 requiring that the case be sustained. On the property as well as before this Board, the Carrier maintained that the notice was delivered on August 16, 1982. In this regard, the Carrier submitted the receipt which Claimant had signed to show receipt on August 16, which was within the requisite seven (7) day period. Before this Board, but not on the property, the Organization submitted a copy of a delivery receipt which it had obtained from Claimant. On that receipt Claimant had written "hand delivered Aug. 18, 1982 at 2:35 p.m. by Mr. Shepherd" and signed his name. Claimant's receipt had not been presented to the Carrier on the property and for that reason may not be considered by this Board. Furthermore, the Board is not persuaded that Claimant would have written the words on the copy of the receipt which he kept but not on the copy which was to be returned to the Carrier. Under these circumstances, the Board is not persuaded that Claimant was advised of his dismissal more than seven (7) days after completion of the investigation.

Rule 53 specifies:

"Where discipline is assessed, the employe and his representatives shall each be furnished a copy of the transcript of the investigation."

The Organization contends that the Carrier violated the quoted provision because it did not furnish a copy of the transcript to the Local Chairman. The Carrier insists that a copy was provided to the Local Chairman. It is not necessary to resolve this factual dispute. Admittedly, the Employee and his General Chairman each received a copy. It is not clear from the quoted language that every representative shall be furnished a copy. However, even if the Local Chairman was entitled to a copy, under these circumstances, failure to provide him a copy would be a harmless, non-prejudicial error.

THE ALLEGED VIOLATION OF RULE G

Rule G:

"The use of alcoholic beverages or narcotics by employees subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on Company property is prohibited. Use or possession of alcoholic beverages or narcotics while on duty or on Company property is prohibited."

There was substantial evidence at the formal investigation to support the finding that Claimant had violated Rule G by being under the influence of alcoholic beverages while on Company property. In this regard, we note that Claimant admitted that he had been drinking alcoholic beverages after work although he claims that he could not remember anything else that occurred the evening of his accident. A witness had smelled alcohol on Claimant's breath immediately after the accident and a tavern had refused to serve him shortly before the accident because he appeared to be intoxicated.

For the reasons discussed above, the Board is satisfied that Claimant was afforded a fair and impartial hearing and the Carrier sustained its burden of producing substantive evidence of Claimant's guilt.

Rule G is extremely important in railroading; violations may be dealt with very severely. However, under the specific circumstances of this case, dismissal is excessive and inappropriate. The Engineer managed to promptly stop his locomotive. No one except Claimant was injured and his injuries on the occasion in question appear to have been minor. Claimant had 39 years of service before this violation. Under the circumstances, Claimant should be given a last chance.

Claimant should be reinstated with all seniority and other rights unimpaired but without backpay. He should be returned to work in accordance with his service provided he receives medical approval from the Carrier's physicians employing normal standards including any procedures in respect to employees who may have problems involving drinking alcoholic beverages.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

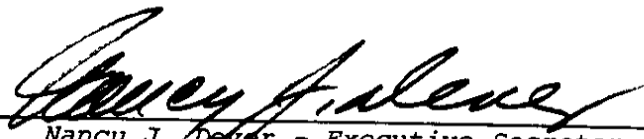
That the discipline was excessive.

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 13th day of January 1986.

