

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(Southern Pacific Transportation Company (Eastern Lines)

STATEMENT OF CLAIM:

"This is to request that Mr. Willis be reinstated to employment with pay for all time lost and his record be cleared of any reference to this incident." [Carrier file 460-59-A]

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

During January 1987, Claimant was working as Chief Train Dispatcher, LW Division (CTC and DTC) at Dispatchers Office, Lafayette, Louisiana. On January 21, 1987, the Carrier's Assistant Superintendent suspended Claimant and gave him notice to attend a Hearing on January 30, 1987, into a charge of allegedly sleeping while on duty at 3:58 A.M. on January 21, 1987. Following agreed-upon postponements, the Hearing was conducted on February 3, 1987. By Notice of February 10, 1987, Claimant was dismissed from service. The discharge was appealed without resolution on the property and is now before this Board for final determination.

The sole issue joined on the record before us is Carrier's alleged departure from the requirement of a fair and impartial Hearing. In that regard, the Organization and Claimant maintain that the Hearing Officer repeatedly cut off relevant questioning by Claimant's Representative and instructed witnesses not to answer his questions, all in violation of Rule 25 which reads in pertinent part as follows:

"Train dispatchers shall not be ... discharged without proper hearing as provided in the following paragraphs....

A train dispatcher against whom charges are preferred, ... shall be accorded a fair and impartial hearing before the superintendent or other designated officers...."

Our review of the transcribed Hearing record shows that the Hearing Officer was dogmatic in cutting off apparently innocuous questioning on tangential issues by Claimant's Representative. Apparently no harm would have been done by allowing the witnesses to answer these questions but, on the other hand, we have examined the transcript carefully and find no fatal error and no deprivation of Claimant's right to examine and cross-examine witnesses on the critical question of whether or not he was sleeping on the job. Any Carrier Hearing Officer who takes it upon himself to cut off questioning of witnesses does so at Carrier's peril. Had the Hearing Officer curtailed relevant and material questioning this case might well have come out differently.


From the record evidence developed, Carrier resolved the credibility conflicts against Claimant and concluded from extensive eyewitness testimony that he had in fact been sleeping on duty. We have reviewed the record and find that it is sufficient to support this conclusion. The penalty imposed is harsh but this was an extremely serious violation with terrible safety implications when a Train Dispatcher sleeps on duty. We find no valid basis in this record for disturbing the discipline assessed.

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 13th day of April 1989.

LABOR MEMBER'S DISSENT
to
Award 27836 - Docket TD-27601
Referee Eischen

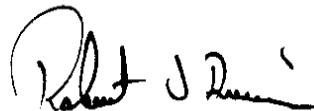
The Appellant in this case was not afforded the "fair and impartial" hearing assured him by the Agreement. The Conducting Officer, on at least three occasions, interrupted cross examination by Appellant's Representative of Carrier's witness, to instruct the witness not to answer pertinent questions designed to search out the motivation behind the charge against Appellant, and to test the credibility of the witness's testimony.

Denial of the Representative's right to unhindered cross examination is a serious procedural error. Third Division Awards 18963, 22681, 23120, and 25491.

Affording a fair and impartial hearing must take precedence over the Conducting Officer's zeal to prove the charge.

The appeal should have been sustained without consideration of the merits, because of the procedural irregularities referred to above.

Because this was not done, this Dissent is respectfully submitted.



Robert J. Irvin
Labor Member