

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

PARTIES TO DISPUTE: (The American Railway & Airway Supervisors
Association: A Division of TCU
(The Long Island Rail Road Company

STATEMENT OF CLAIM: "It is the Claim and request of the Petitioning Organization that:

1. Carrier has violated the Agreement and in particular Rule 28 (B) Discipline, when on October 26, 1988 they assessed the discipline of disqualification to Mr. D. M. Platz without affording him the due process of a fair and impartial investigation.

2. As the result of this violative action, Carrier be required to reinstate Mr. Platz to his former position in Group 2 with seniority rights unimpaired and further that he be compensated for all lost wages."

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.

This dispute involves a contention relative to the application of Rule 19, Disqualification versus Rule 28, Discipline. There is no contradiction of the fact situation which existed and which formed the basis of Carrier's actions of disqualification.

Claimant was employed as a Group 2 Train Dispatcher when, on October 25, 1988, he involved himself in three (3) extra-curricular activities while on under duty and under pay. First, he engaged in the act of throwing paper balls throughout the Train Dispatcher's office. When cautioned by his Supervisor about this activity, he ceased throwing paper balls. Later in the same tour, Claimant draped toilet paper throughout the Supervisor's office. When he was admonished about this behavior, he cleaned up the paper. After the Supervisor departed from his office, Claimant, for a third time in the same tour, acted in an abnormal manner by ordering the public address announcer to broadcast three (3) separate messages over the Carrier's public address system none of which was related to the operation of Carrier's trains or to any other

legitimate situation. When confronted on this behavior, Claimant readily identified himself as the instigator of the announcements.

As a result of these activities, Claimant was informed, in writing, on October 27, 1988, that in accordance with the provisions of Rule 19 (b), he was disqualified from his Group 2 position and demoted to a Group 3 position.

Subsequently, on October 29, 1988, while Claimant was on duty on a Group 3 PA Console Operator position, he disappeared from his assigned position from 8:10 PM until 8:40 PM, reappeared wearing a Halloween costume and informed the Chief Train Dispatcher that he intended to wear the costume for the remainder of his tour, and further that he intended to leave his position at 9:11 PM to attend a party. The tour of duty of the position to which he was assigned extended to 10:00 PM.

Thereafter, by letter dated October 31, 1988, Claimant was removed from the Group 3 position and notified that in accordance with the provisions of Rule 19 (c) he forfeited his seniority in Groups 1, 2 and 3.

Throughout the handling of this case both on the property and before this Board, no challenge has been made, nor any denial offered by Claimant, to dispute any of the episodes which formed Carrier's basis for their separate acts of disqualification. Rather, the argument advanced was that Claimant's actions did not represent any unsatisfactory performance of the duties of his positions, but constituted "...horseplay, practical jokes, etc., and this falls under the jurisdiction of Rule 28 Discipline."

The following portions of the applicable Agreement between the parties are of significance in our determination of this dispute:

PREAMBLE

"Employees subject to this Agreement assume the obligation of rendering honest, efficient, loyal and economical service to The Long Island Rail Road Company.

A spirit of cooperation between employer and employee being essential to efficient operation of a Railroad, both such parties enter into this Agreement with the purpose of promoting such spirit, and mutually agree to abide by the rules herein which are designed to protect the best interest of the Carrier, its employees and the Association."

RULE 19 - DISQUALIFICATION

"(a) An employee, regularly assigned a position in Group 1, who is thereafter removed from such position by reason of failure to satisfactorily perform the duties of the position, shall be demoted to a position in Group 2 consistent with the employee's seniority in that group for a period of six (6) months, after which time the

employee must exercise seniority by bid on any open position in Group 1.

(b) An employee regularly assigned a position in Group 2, who is thereafter removed from such position by reason of failure to satisfactorily perform the duties of the position, shall be demoted to a position in Group 3 consistent with the employee's seniority in that group for a period of six (6) months after which time the employee must exercise seniority by bid on any open position in Group 2.

(c) An employee regularly assigned a position in Group 3, who is thereafter removed from such position by reason of failure to satisfactorily perform the duties of the position, shall forfeit seniority in Groups 1, 2 and 3.

(d) In the event that an employee is so demoted, the General Chairman will be advised in writing the reason for such action. At the General Chairman's request, an informal meeting to discuss the matter will be held with the Assistant Superintendent-Train Movement."

RULE 28 - DISCIPLINE

"(A) Giving due effect and regard for the status of employees covered by this Agreement as subordinate officials of Carrier, necessity for disciplinary action should never arise, but for the protection of any such employee against whom Carrier may have to prefer charges the provisions which follow will govern.

(b) An employee covered by this Agreement who has established seniority and against whom Carrier has preferred charges shall not be disciplined or dismissed without a fair and impartial trial, or investigation, at which he shall be permitted to have present a duly accredited representative (as that term is defined in the Agreement) and witnesses to testify on his own behalf. Such employee shall make his own arrangements for the presence of his representative and witnesses at no expense to the Carrier.

(c) When a major offense has been committed, shall be amended to provide the employee may be held out of service pending such trial and decision only if their retention in service could be detrimental to themselves, another person, or the Carrier. For the purpose of this Rule, the following items shall be considered a major offense: insubordination, assault, theft, intoxication, drug abuse, and violations of the Rules of the Operating Department which are conspicuously bad or objectionable offenses or errors so bad that they cannot escape notice or be condoned.

(d) An employee who is accused of an offense and who is directed to report for a trial therefor, will be given ten (10) days advance notice, in writing, of the exact charge for which he is to be tried and the time and place of the trial.

(e) At the trial the accused employee and/or his representative shall be permitted to question witnesses insofar as the interests of the accused employee are concerned.

(f) A copy of the trial record shall be given to the accused employee and to his representative who accompanied the employee at the trial within fifteen (15) days of the trial.

(g) If discipline is to be imposed following trial and decision, the employee to be disciplined will be given written notice thereof at least ten (10) days prior to the date on which the decision is to become effective except that in cases involving major offenses discipline may be made effective at any time after decision without advance notice.

(h) If the discipline to be applied is suspension, the time the employee is held out of service prior to the serving of the notice of discipline shall be applied against the period of suspension.

(i) If the decision is not satisfactory to the employee, appeal may be taken in regular order of succession to the Superintendent-Transportation and to the highest designated officer of the Carrier, provided each appeal is made, in writing, within thirty (30) calendar days from date of the previous decision. This appeal shall act as a stay of any discipline imposed except in the case of a major offense.

(j) The decision of the Final Appeals Officer shall be considered final and binding unless within sixty (60) calendar days thereafter he is notified in writing that the decision is not acceptable. Subsequent handling must be instituted within twelve (12) months from the date of such decision."

While Carrier's Train Dispatcher's office may not be a Chesterfieldian tea room, neither is it a place where infantile, churlish behavior is to be tolerated. The employees who are subject to the Agreement between the parties, by the Preamble thereto, "assume the obligation to render honest, efficient, loyal and economical service...." Throwing paper balls, draping offices with toilet paper, mischievous use of the public address system, deserting an assignment for extended periods of time and wearing Halloween costumes on duty represent none of the qualities set forth in the Agreement's

Preamble. Unsatisfactory performance by an employee in a subordinate official position, such as those here involved, can extend beyond the specific delineated work items of a position. Rule 28 - Discipline recognizes that the "...necessity for disciplinary action should never arise..." because of the "...status of employees covered by this Agreement as subordinate officials" The type of behavior which Claimant displayed on October 25, 1988, was a demonstration of unsatisfactory performance as a Train Dispatcher and a demonstration of judgment which is inconsistent with that required by a Train Dispatcher.

Further, if the October 25, 1988, episodes were not enough, this Claimant, just four (4) days later on October 29, 1988, again engaged in a disruptive manner which again demonstrated his lack of reasonable judgment. Apparently the demotion from the Group 2 position had no salutary effect on him.

It is the opinion of this Board that, on the basis of the fact situation which existed in this particular case, an application of the provisions of Rule 19 was proper. We do not imply that Rule 19 can be used in all types of aberrant situations. Clearly there may well be instances where "subordinate officials" should be charged and accorded an impartial trial under the provisions of Rule 28. We say merely that in this case, the fact situation which existed here constituted unsatisfactory performance of the duties of the positions here involved. The claim as set forth in the Statement of Claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.