

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

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Gateway Western Railway

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10575) that:

1. Company violated the agreement between the parties when it wrongfully suspended Clerk Walt Francz, Kansas City, MO., from service of the Company for seven (7) days, commencing 12:01 a.m. June 6, 1990 and ending 11:59 p.m. June 12, 1990, following investigation held June 5, 1990.

2. Company shall now be required to compensate Clerk Walt Francz for seven (7) day's pay, June 6, through June 12, 1990, and his record be cleared of all charges as a result of investigation."

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.

Claimant was employed as a crew caller on May 11, 1990. While working in that capacity, he attempted to contact employees assigned to the Extra Board to fill vacancies on a Work Train assignment programmed to begin work at 7:00 A.M. on May 12, 1990. As a result of allegedly calling the Extra Board employees too late to properly report for duty at 7:00 A.M. on May 12, the Work Train did not begin to perform service until 11:15 A.M. on that date. Thereafter, on May 14, 1990, Claimant was instructed to attend a formal investigation to be held on May 17, 1990, in connection with a charge of "improperly calling crew for Work Train while on duty as second shift Crew

Caller at Kansas City on May 11, 1990." By agreement of the parties, the Investigation was postponed to June 5, 1990, at which time Claimant was present, represented and testified on his own behalf. Following the completion of the Investigation, Claimant was immediately withheld from service pending a decision on the Investigation. He was subsequently informed by notice dated June 12, 1990, that he was found at fault on the charge and was disciplined by suspension of seven days which covered the period from June 6 to June 12, 1990.

In our review of the several contentions and counter-contentions as made by the parties in their presentation of this case, we are not persuaded by the Organization's argument relative to the issue of precise charge. The charge as made, while not a text book example, was sufficiently precise to allow the Claimant the opportunity to properly prepare himself to testify at the Hearing. A postponement of the Hearing was requested and granted without objection to the specificity of the charge. Additionally, the Claimant answered in the affirmative when asked at the Hearing if he understood the charge and was ready to proceed. This contention by the Organization is therefore rejected.

However, our review of the Hearing transcript, which is the principal document developed during the on-property handling of any discipline case, reveals that a basic procedural error has occurred in this case which impacts adversely on Carrier's position in this dispute. The same Carrier Officer who was directly involved in the series of circumstances which precipitated the formation of charges also sat as the Hearing Officer throughout the Investigation Hearing. This same Carrier Officer then proceeded to offer first-person testimony during the Hearing and concluded by stating that he was amending the charge to include matters which were not part of the original notice of charge. This same Carrier Officer then made the determination to withhold the employee from service at the conclusion of the Hearing before any decision had been made thereon.

While this Board has repeatedly held that a Hearing Officer in a discipline case should be given certain liberty of action when conducting an on-property Hearing, the record in this case goes well beyond the rule of reason in that regard. The Hearing Officer should not be an individual who was directly involved in the situation which precipitated the bringing of charges. The Hearing Officer, while entitled to certain latitude in his development of the Hearing record, is not entitled to give first-person testimony such as is found in this case. The Hearing Officer should, at the very least, give the appearance of being fair and impartial. When that does not occur, the interests of the accused are seriously prejudiced.

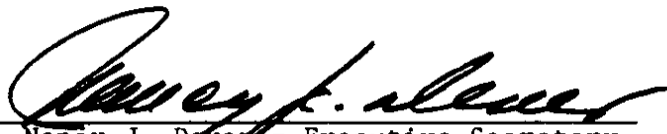
It is our determination in this case, on the basis of this record, that the discipline as assessed should be removed from Claimant's record and he should be made whole for time lost, less any amount earned in other employment.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.