

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30486
Docket No. CL-30370

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

PARTIES TO DISPUTE: (Transportation Communications
(International Union
(
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Union (GL-10663) that:

(1) Carrier acted in an arbitrary, capricious, unjust, uncalled for and discriminatory manner when, without just cause, it held a formal investigation on Administrative Accountant Isadore Malesev on April 4, 1989, and, subsequently, on April 14, 1989 disqualified him from position of Administrative Accountant, E0004.

(2) Carrier shall now be required to remove and expunge any and all reference to said disqualification forthwith from the record of Administrative Accountant Isadore Malesev and any reference thereto and Mr. Malesev be restored to his rightful position of Administrative Accountant 0004.

(3) Carrier shall now be required to compensate Isadore Malesev for all time lost commencing April 14, 1989, and continuing for each and every date he is withheld from his rightful position of Administrative Accountant 0004."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

According to the record of Investigation, Claimant was a 33½-year employee at the time he was disqualified. Notice of the charges and the time and date of the Investigation were served and received by Claimant on March 20, 1989. The notice read, in pertinent part, as follows:

"You are charged with being unqualified to perform your duties by reason of your failure to ensure that Payroll is input into the computer properly, arrange timely and accurate input of Form 7243, arrange timely and accurate input of Form AP1 and ensure that Form AP1 is properly approved.

* * *

You are responsible for arranging for a representative and any witnesses you may desire."

At the request of the Local Chairman, Carrier postponed the Investigation five days until April 4, 1989. When the Investigation began on that date, Claimant named three desired witnesses and said he was ready to proceed.

Claimant's supervisor testified from his personal notes and from copies of letters issued to Claimant. At the time the supervisor's corrective action began, Claimant had been in the position just over one year. The supervisor's notes and letters spanned 13 months and documented some 20 instances where the supervisor described a variety of payroll input errors, including errors associated with the forms specified in the Notice of Investigation. With few exceptions, each instance was accompanied either by a conference between the supervisor and Claimant or a letter from the supervisor noting the error, describing the corrective action required, and stating the need for improvement. Some of the letters warned of disqualification. Claimant does not deny making the errors or failing to catch the mistakes of his subordinates, nor does he deny attending the counselling conferences or receiving the corrective letters.

At the conclusion of the supervisor's testimony, the Organization was granted an extended lunch recess to study exhibits. When it came time for Claimant's witnesses to testify, the Local Chairman represented that they had apparently departed on their own initiative. It was about 4:25 P.M. He requested a continuance until the next day but he made no offer of proof or similar statement about the importance and nature of their testimony to support his request, nor did he explain why he had not secured their attendance during the recess. The Hearing Officer denied the request and the Investigation proceeded to its conclusion without protest. The session ended with the Local Chairman reading into the record, despite the Hearing Officer's inadmissibility ruling, six statements by other employees describing their past good working relationship with Claimant.

The Organization raised both procedural and substantive defenses on the property. Procedurally, it claimed the notice was vague and insufficiently specific. In addition, the refusal to grant the requested continuance was asserted to be a fatal impropriety. Both of these contentions lack merit. At no time prior to the commencement of the Investigation, a 15-day period that included a 5-day postponement, did the Organization or Claimant challenge the adequacy of the notice. At the outset of the Investigation, they identified their witnesses and declared readiness to proceed. Regarding the requested continuance, no good cause whatsoever was shown why it should be granted. Accordingly, it was not an abuse of discretion, on the facts of this record, to deny the request.

Regarding the merits, the Organization asserts that there is no evidence of wrongdoing and that Carrier failed to sustain its burden of proof. Moreover, it challenges the admissibility of the supervisor's notes and letters. These contentions must also be rejected. The Investigative record contains substantial evidence of Claimant's lack of qualification that has not been overcome by the Organization. Therefore, Carrier's determination that Claimant was not qualified for the Administrative Accountant position must be sustained.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.