

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31167
Docket No. SG-31035
95-3-92-3-878

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Norfolk Southern Railway Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk Southern Corporation:

(1) On behalf of R. G. Shirley for reinstatement to service with seniority rights unimpaired and with pay for all time and benefits lost, account Carrier violated the current Signalmen's Agreement, particularly Rule 50, when it failed to provide the Claimant with proper notice of disciplinary charges and then imposed the harsh and excessive discipline of dismissal from service."

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 on June 21, 1934.

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

The parties to said dispute were given due notice of hearing thereon.

Claimant held service since March 1978 in the position of Signal Maintainer when, in a letter dated November 15, 1990, the Carrier indicated it was to investigate the allegation of involvement with a Rule GR-3 violation. Said Investigation was completed on December 3, 1991, and by letter dated December 23, 1991 the Claimant was dismissed from service.

On January 28, 1992 the Organization appealed the dismissal decision, contending that proper notice, per Rule 50, had not been granted the Claimant. The Carrier responded by claiming that its

certified mail had not been accepted by the Claimant, thus providing the reason why no notice was improper to maintain.

Failing resolution, the matter is now properly before this Board.

The Organization stresses that eleven months passed between the issuance of the discipline and receipt of the notice on October 21, 1991. The Carrier knew from the non-acceptance of the certified mail that Claimant had not received the notice. Its decision was arbitrary and capricious in settling upon its decision to dismiss the Claimant. To move to sever employment in this brusque fashion is not progressive discipline but harsh, excessive and unwarranted.

The Carrier points out that the Claimant was given ample notice of the Investigation but postponed his hearing set for October 25, 1991, by virtue of his non-appearance and subsequent rescheduling due to medical appointments for a work-related fall he suffered. There are 11 citations of improper work performed by or failed to be rendered by the Claimant.

In summary, timely and proper notice was given. Also the Claimant was guilty of the poor work allegations and is dismissal is justified on the record.

The Board has evaluated the relative positions and supporting cases offered by the parties in light of the record made upon the property and the contract itself. We conclude that written notice is an inimitable right of employees attempting to have meaningful access to the grievance system. This is due to the needs of the employee's representatives who must respond, give advice and present any resulting grievances. If third party evidence that the discipline was issued in writing is all that can be offered to offset the Claimants' allegation of non-service of same, it cannot counter the weight of the record on this point.

We conclude that the Claimant and his representatives knew of the potential for discipline was real because they knew of the Investigation being rescheduled. By virtue of Claimant's unspecific and vague response concerning his submission to the Carrier of an address change, he is responsible for any non-receipt of certified mail.

Without weighing the merits of the eleven charges or more correctly the defenses to them by the Organization, the frustration of this process is clearly more the fault of the Claimant.

But even if the Claimant has convincing evidence to counter all the charges of work misfeasance or nonfeasance the culminating episode in this long endured odyssey of a case resides in the his January 13, 1994 performance before this Board.

For on that hearing day this matter was specially set on the docket at the specific time of 11:00 am CST at the Organization's request on behalf of the Claimant. The Claimant had pled to make the presentation of his case for his benefit because he felt only he could do it justice even though he appreciated the efforts of his representatives.

While the Referee was hearing another matter the Claimant appeared untimely at the Board office in Chicago. Further accommodating him, the Board agreed to proceed once the Referee was available. The Claimant stated that his wife was driving their vehicle around downtown Chicago having dropped him off at 175 W. Jackson St. in order for him to announce his presence at the Board office. He was instructed to return to his spouse, park his vehicle and return to the office for his hearing. When the Referee was informed of this turn of events he agreed to wait for Claimant's expected return and proceed with his appeal.

The Claimant was not seen or heard from again that day. The parties agreed to remain available for the rest of the day. The Referee even stayed in Chicago an extra day (January 14) in case the Claimant resurfaced and wanted to hold his hearing. There was no call or appearance or other explanation to the Board or to the Organization representatives from the Claimant that day either.

Several months later, in a bizarre attempt to resurrect what had at this point been scuttled by his own conduct, the Claimant wrote a letter to the Referee blaming Chicagoland traffic for his delay in reaching the Board office on January 13th for his hearing!

This Board has reviewed the entire record and cannot overturn the Carrier's assessed discipline for any substantive or procedural reason. The Claimant has received every courtesy and cooperation available to him. His conduct relative to this collective bargaining grievance process has been unconvincing to say the least.

AWARD

Claim denied.

Form 1
Page 4

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ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.