

PUBLIC LAW BOARD NO. 132

Award No. 37
(Case No. 114)

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

VS.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM:

"Claim of the General Committee of the Transportation-Communication Employees Union on the Atchison, Topeka and Santa Fe Railway, that:

- "1. The Carrier violated the terms of the Agreement between the parties when it invoked harsh, unreasonable and arbitrary discipline against the person of Mr. P. J. Powelson, Agent-Telegrapher at Hugoton, Kansas, by removing him from its service, effective on or about November 15, 1966.
- "2. Carrier further violated the Agreement by failing to observe the procedural provisions thereof and provide the Organization with copy of Notice of Discipline within the time limit provided therein, as well as failing to furnish copy of transcript of minutes taken at the investigation.
- "3. Carrier shall now restore Mr. Powelson to his position as Agent-Telegrapher at Hugoton with seniority vacation and all other rights unimpaired.
- "4. Carrier shall compensate Claimant Powelson in the amount of a day's pay for each day Claimant is held out of service beginning November 15, 1966 forward at the rate of the Agent-Telegrapher's position at Hugoton, Kansas."

JURISDICTION:

The jurisdiction of this Board is stated in its Award No. 1. That statement is incorporated herein by reference thereto.

OPINION OF BOARD:

This dispute involves a discipline case. The Employees ask that Claimant be restored to his position as Agent-Telegrapher at Hugoton, Kansas, with seniority, vacation and all other rights unimpaired, plus a day's pay for each day he has been held out of service. The Employees contend that Carrier violated the Agreement by failing to observe the procedural provisions thereof and that the discipline assessed was excessive.

Carrier originally contended that the appeal was not timely handled under Article V, Section 4 of the effective Agreement. This position has been waived by the Carrier.

On November 1, 1966, Claimant was advised in writing, with a copy to the District Chairman, of the nature of the charges against him and the time and place the investigation was to be held. At the time of the hearing the Claimant was asked if he desired a representative for the purposes of the hearing. We quote the following from the transcript of the hearing (interrogation by Mr. Chaddock):

"Q. Do you have a representative for this investigation?

A. No, sir.

Q. Do you desire one?

A. No, sir.

Q. Would you put it in writing stating that you do not desire a representative in investigation held November 4, 1966?

A. Yes, sir."

We are concerned here with Sections 1-b, 2 and 3 of Article V of the October 1, 1965 Agreement. These sections read:

"Section 1-b. Prior to such investigation, the employee or employees alleged to be at fault shall be apprised in writing, with copy to the District Chairman of the Organization, of the precise nature of the charges to be investigated, as well as the time and place thereof, sufficiently in advance to afford an opportunity to secure the presence of necessary witnesses and representatives.

"Section 2. At such an investigation the employee may be represented by one or more officers of the Organization who are employees of the Company. Only one of those so assisting him shall be permitted to interrogate witnesses.

"Section 3. An employe disciplined as a result of a formal investigation will be informed thereof in writing with copy to his representative, within twenty (20) days after completion of the investigation unless a longer time limit is mutually agreed upon. A copy of the transcript of the evidence taken at the investigation will be furnished to the employe and a copy to one of his representatives."

We believe the word "may" in Section 2 to be most important. Section 2 allows the employee to have a representative present at an investigation but does not make it mandatory.

We find that the Carrier complied with the Agreement in the handling of this investigation. We find no further irregularities in the appeal procedure or assessment of discipline.

The Claimant admitted his guilt at the investigation and we are not persuaded by the Organization's plea for leniency.

Third Division N.R.A.B. Award 11769 (Engelstein) states:

"* * *. These are not defenses, but are proffered in mitigation. We are not unmindful of the long previous record of service of Petitioner and the serious nature of disciplinary punishment. We find from the record that he had a fair hearing in which charges were sustained. In the absence of substantial error or abuse of discretion on the part of Carrier, we refrain from setting aside or modifying Carrier's considered judgment."

We will deny the Claim.

FINDINGS:

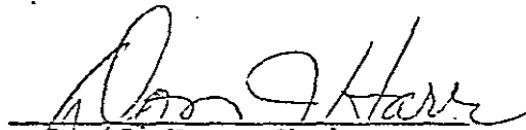
Public Law Board No. 132, upon the whole record and all the evidence, finds and holds:

1. That Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;
2. That the Board has jurisdiction over the dispute involved herein; and

3. That the Agreement was not violated.

AWARD

Claim denied.


Don J. Harr, Chairman


Ralph O. Norton, Employee Member


O. M. Ramsey, Carrier Member

Topeka, Kansas
January 31, 1969