

BEFORE

PUBLIC LAW BOARD NO. 3863

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

STATEMENT OF CLAIM: Claim for restoration to service of Richard Pinette, with seniority and all other rights unimpaired and with compensation for wage loss suffered by reason of unjust dismissal.

Following a trial, the claimant was dismissed for the charged offense of violating a Carrier rule on alcohol use.

The Brotherhood has based its case on the procedural contention that the claimant was dismissed "without a fair and impartial trial," in violation of Rule 68 of the basic Agreement. The contention rests on these particular instances of claimed bias and prejudice on the part of the Hearing Officer:

He questioned several witnesses before the start of the trial. He allowed a witness to give direct testimony by reading his previously prepared statement, which act reflected collusion between the Hearing Officer and the Carrier. He appended exhibits to the record without prior review by the claimant. He submitted to the supervisor who imposed discipline a one-sided summary of the testimony; the claimant's personal record (not introduced at the hearing); and his confidential rehabilitation history.

The Carrier responds that the trial was fair and impartial; that the Brotherhood's challenges have no merit.

FINDINGS: The Arbitrator finds on the whole record and all the evidence that the carrier and each employee involved in this dispute are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over this dispute.

After careful examination of each of the Brotherhood's specifications, the Board concludes as follows on the record before it.

There is clear record evidence that the Hearing Officer questioned three of the twelve witnesses before the trial began. Two witnesses gave affirmative answers to the Brotherhood's question as to whether they had "discussed" the trial with the Hearing Officer prior to its scheduled time. In behalf of the third witness, the Hearing Officer responded that he had asked "some questions ... pertaining to the charges." The Brotherhood made no further probe of the subject. It asked for no details, and none were volunteered.

Impartiality demands that a hearing officer maintain a neutral role in developing all the facts at the trial pertaining to the offense with which an employee is charged. In our opinion, this Hearing Officer committed a clear indiscretion by asking witnesses any questions about the trial before it began. That conduct alone is nevertheless, in our view, not sufficient on this record to warrant a finding that the dismissal decision was based on substantial bias and prejudice. In the absence of any evidence as to the details of the questioning, we cannot find that the Hearing Officer conducted a one-sided pre-hearing "investigation," as the Brotherhood says. Nor can we find that any of the three witnesses gave untrue or prejudiced testimony against the claimant based on the pre-trial questioning. Indeed, the claimant himself confirmed the truth of what two of the witnesses said.

We find no evidence of collusion either in permitting the witness to read his prepared statement or in the Hearing Officer's comments. The Brotherhood had a copy of the statement and it conducted a full cross-examination on its preparation and contents.

Finally, we can see no prejudice to the claimant's case in the Hearing Officer's submission to the Division Engineer of what are essentially no more than internal study materials. It is reasonable to presume that the Division Engineer made his own independent review and evaluation of the record before reaching his decision on the charges. The claimant's personal record was relevant to the discipline to be assessed. He was informed at the trial of its possible use for that purpose.

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Accordingly, we conclude that the basic allegation of violation of Rule 68 is not supported by the evidence. Since it has not been shown that the claimant was dismissed without a fair and impartial trial, the claim of unjust dismissal has not been sustained.

AWARD: The claim is denied.

Ja Klaus
Neutral Member and Chairman

SC Hinc
Carrier Member

JR L. Ruse
Brotherhood Member
(written dissent to follow)

December 5, 1985