

SPECIAL BOARD OF ADJUSTMENT NUMBER 928

Award Number: 12

Case Number: 12

PARTIES TO DISPUTE

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

and

NATIONAL RAILROAD PASSENGER CORPORATION

STATEMENT OF CLAIM

"Appeal of Engineer E. L. Spinken, of a three (3) day suspension assessed as discipline in connection with the following:

'Failure to be available for assignment EPH-1 when called at approximately 3:18 a.m., Friday, July 20, 1984, while assigned to the Philadelphia Division Extra Passenger Engineers List. Violation of Rule T, AMT-1.'

In accordance with Rule 21 of the Schedule Agreement, we are appealing the above discipline and request Mr. E. L. Spinken be paid for all lost time and removal of discipline from claimant's record."

FINDINGS

Claimant, at the time of the incident in question, was employed by Carrier as a Passenger Engineer at Philadelphia, Pennsylvania. On July 20, 1984, Claimant was called to cover assignment EPH-1. By letter dated July 23, 1984, Claimant was notified to attend an investigation concerning charges that he failed to cover his

assignment on July 20, 1984. An investigation was held on August 6, 1984. By letter dated August 15, 1984, Claimant was notified that he was being assessed a three day suspension resulting from his failure to cover his assignment on July 20, 1984.

The issue to be decided in this dispute is whether Claimant was disciplined by Carrier for just cause under the Agreement.

The position of the Organization is that Carrier denied Claimant a fair and impartial investigation as required by the Agreement. The Organization contends that Carrier improperly rejected its request to have a relevant witness testify on Claimant's behalf. The Organization contends that the testimony of the witness, concerning a similar incident, would have greatly assisted Claimant's case. The Organization contends that Carrier abused its discretion by not granting the request to have that witness present at the investigation. The Organization cites several awards holding that a claim must be sustained where Carrier improperly prevented a material witness from testifying.

The Organization argues additionally that Carrier failed to establish Claimant's culpability concerning the incident in question. The Organization cites an exhibit requesting Carrier to "cut in on the line" when it needed to reach an employee whose line was busy.

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The Organization alleges that Carrier could have avoided the incident merely by cutting in on Claimant's line to contact him. The Organization further cites testimony indicating that the crew despatcher failed to verify that Claimant was called on the date in question, and testimony indicating that the telephone system itself had been in a state of confusion. The Organization cites Claimant's testimony where he stated that he called Carrier on the date in question to inquire why he had not been called. The Organization further cites testimony indicating that neither Claimant nor his wife heard the 4:00 a.m. call, and that neither of them used the phone at that time. The Organization concludes that the Carrier failed to sustain its burden with regard to Claimant's guilt.

The position of the Carrier is that it established Claimant's guilt through substantial evidence. Carrier cites the testimony of Crew Despatcher I. Mack, who testified that Claimant could not be reached at 3:18 a.m. on the date in question due to the line being busy. Carrier maintains that Claimant's inability to be reached for assignment constituted a clear violation of Operating Rule T. Carrier alleges that, contrary to the Organization's assertion, no question exists that Claimant's number was correctly dialed on the date in question. Carrier alleges that it did a tone test to determine if the tones on the recorded tape

(of July 20) matched that of Claimant's home number, and found that the tones did match.

Carrier additionally argues that it did not violate Claimant's right to a fair hearing. Carrier maintains that under Rule 21 (e)(2), it is required to call only those witnesses with "first hand knowledge" of the incident. Carrier further maintains that Engineer Woodcock, the witness in question, had no such knowledge and therefore was not called to testify. The Carrier contends that this can in no way be seen as an abuse of its discretion, and cites an award allegedly supporting its position.

After review of the record, the Board finds that the claim must be sustained.

It is not the purpose of this Board to rehear an investigation that the Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

We find that Carrier has abused its discretion in its disciplining of Claimant under the circumstances.

The Board finds that Carrier failed to establish Claimant's culpability through substantive evidence. Even accepting Carrier's

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contention that it called Claimant's correct telephone number, we find that fact insufficient to sustain Carrier's burden of proof. The charge in the present case involved Claimant's failure to protect assignment. Carrier, in our view, is under an obligation to make more than one attempt at reaching an employee before summarily imposing discipline. The facts of the present case indicate Claimant's line was busy at approximately 3:18 a.m. on July 20, 1984. Under those circumstances, Carrier's employee should have called Claimant back to either confirm the busy signal or to reach Claimant. A busy signal at that time might well be due to an emergency of some sort, since it is not the usual situation where the telephone is being used at that hour. In any event, if Carrier is to justify a charge of failure to be available for assignment, it must at a minimum attempt more than once to contact an employee whose line is momentarily busy.

AWARD

Claim sustained.


Neutral Member


Carrier Member


Organization Member

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