

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19487
Docket Number CL-19733

Alfred H. Brent, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Norfolk and Western Railway Company
((Involving employees on lines formerly
(operated by the Wabash Railroad Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7129)
that:

(1) Carrier violated the provisions of the Schedule for Clerks, effective May 1, 1953, when on June 8, 1971, it arbitrarily, capriciously and in a flagrant abuse of discretionary authority, dismissed Clerk L. J. Krupa from the service of the Carrier based on unproven charges in violation of the provisions of Rule 28 of the Schedule for Clerks.

(2) Claimant will now be returned to work with all rights unimpaired.

(3) Claimant will now be paid for all time lost.

(4) Carrier will now be required to pay interest on all time lost at the rate of one percent compounded monthly.

OPINION OF BOARD: The record discloses that L. J. Krupa, the claimant, was hired by the Wabash Railroad on June 27, 1969 and was assigned as a Westbound Yard Clerk at the 17th Street Boatyards, Detroit, Michigan. On May 16, 1971 Car #N.Y.C.86563 arrived at the Boatyards and was routed to Track #27, a track customarily used for "Bad Order" or customs cars. The claimant Krupa, in the normal course of his duties, carded this car as "Manifest" and became aware of the fact that a car door was open. He then notified the carman, Mr. Dubanik. When later in the day he checked again with Dubanik to see if the car door had been closed, Dubanik had not done so. At about 9:00 p.m., while going about his duties in the yard, Krupa alleges that when he was at Track #24 he was summoned to Track #27 by Carman Dubanik to help him put a T.V. set, which was half in and half out of the car, back into the car so that the car door could be closed. During the course of this activity Special Agents Vocina and Dupuie arrived at the scene because they had observed someone jumping out of the car in question. There is a conflict in the testimony as to exactly what had been happening during this time. The agents found Krupa and Dubanik on the scene, a television set half in and half out of the car, debris from opened cartons on the ground, and two additional television sets out of their cartons, on the ground.

As a result of this incident Krupa was advised by Supt. H. C. Scott on May 27, 1971 to report for an investigation on June 2, 1971 in connection with a charge by the carrier of the alleged unauthorized removal of television sets from car #86563. Following the investigation on June 8, 1971 the Carrier advised the claimant, Krupa, that he was terminated. The Organization appealed the termination on the ground that there was not an impartial investigation because Supt. Scott had allowed all witnesses to remain in the interrogating room to listen to all the testimony, over the protest of the claimant's representative. And furthermore, the interrogating officer asked leading questions of the carrier's witnesses.

This Board has held on innumerable occasions in the past that absent a specific rule in the contract between the parties requiring sequestration of witnesses, the Carrier's failure to exclude witnesses from the hearing room until called to testify, did not deny claimant a fair and impartial hearing. (Awards Nos. 5061 (w/o Referee, 9326 (Rose), 14391 (Zumas) and 16007 (Ives). In the context of this case the exclusion of witnesses while not testifying is discretionary.

This Board's review of the facts in this case is limited to the determination of whether the original hearing officer was convinced by substantial evidence and was not arbitrary or capricious. It was the clear thrust of the testimony that the claimant, Krupa, had not reported to anyone in authority at the Boatyard, other than Carman Dubanik who was admittedly with him at the scene, that the car door was open or that the television sets were out of the car. Krupa's claim that he attempted to notify others in authority at another terminal six miles away was not supported by any witness.

While there may be a conflict between the testimony of the parties, it is not for this Board to resolve that conflict. Where the evidence adduced at the property is substantial and the decision was not arbitrary or capricious, then the decision of the Carrier, both as to the question of guilt and the amount of discipline to be invoked, should not be interfered with.

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

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

Award Number 19487
Docket Number CL-19733

Page 3

That this Division of the Adjustment Board has jurisdiction over
the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.