

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21040
Docket Number CL-21249

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: {
(Brotherhood of Railway, Airline and
Steamship Clerks, Freight **Handlers**,
Express and Station **Employees**
(Chicago and **North** Western Transportation **Company**)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood, GL-7930, that:

1. Carrier violated the Agreement Rules, particularly Rule 21, when it dismissed Mr. Clarence **Portz**, Jr. Materials **Handler** at Clinton, **Iowa**, from service effective January 7, 1974 without cause, and;

2. Carrier shall be required to compensate Mr. Clarence **Portz**, Jr. **from January 7**, 1974 forward for all losses sustained account of such dismissal, to include interest at the rate of **6%** per annum.

OPINION OF BOARD: On **December 26**, 1973, Claimant **was** charged as follows:

"Conduct **unbecoming** an employee of the Chicago and **North** Western Transportation Company, specifically killing a cat in the Welfare Area of the Storehouse, on or about **10:30** A.M. on December **20**, 1973."

Investigation was conducted on December 26, **1973**. On January **4**, **1974**, Carrier forwarded notification of discharge from service which Claimant received on January 7, 1974.

Claimant contends that Carrier failed to establish that he **was** guilty as charged, and also notes that Carrier's various procedural violations deprived him of a fair and impartial investigation, as **well** as due process.

Rule 21(a) specifically states that in cases where discipline is administered, a decision, in writing, will be rendered within seven calendar days **after** the completion of investigation. There is no **question** that the seven-day rule was not complied with; but Carrier defends its action on the basis that in order to give Claimant a fair and impartial investigation, all findings of the investigation were sent to the Labor Relations Department "for their verdict."

Claimant next asserts that the first Carrier designated appellate officer forwarded the file to the final designated appellate officer for his "**verdict.**" It is alleged that **intervention** by the highest appellate officer at **the** initial level of appeal effectively destroyed **a** meaningful **a-e** of appeal. Claimant also **notes** that participation in the appellate process by the **individual** who made the initial decision to discharge **was** prejudicial to Claimant's substantial rights. We also mte that the same official preferred the charges, **appeared** as a witness and made the decision to terminate.

Further, Claimant notes that the charge specified an improper action at **10:30** a.m., whereas at the hearing, **Carrier** attempted to show that the killing **occurred** between **9:00** a.m. and **9:15** a.m.

At the investigation, Claimant denied killing the cat, and produced witnesses who corroborated his version **of** the events of the morning. Carrier relied upon an asserted admission by **Claimant**; however, **Claimant** denies that he had admitted killing the cat.

On the property, Carrier conceded that there was no excuse for failure to issue the discipline within the time limits, but it concluded that the Claimant was not prejudiced by the delay, and it also states that the seven-day rule is merely a guideline. In any event, it urges, **any** award **of** damages for failure of compliance is limited to the date of the late denial.

In our consideration of the various procedural issues presented, we are, of course, mindful of the fact that the Claimant did mt, at the hearing, concede guilt **of** the offense; but rather, he insisted that he **was** innocent and presented **witnesses** to corroborate the pertinent **timeframes**.

We have also noted Carrier's contentions, as stated at Page 8 of its **Ex Parte** Submission:

"As pointed out in the carrier's submission in previous cases, the supervising officer's signature on the notice of charges and the discipline notice is, in effect, a formality; that is, he signs such notice as the claimant's supervisor. **There** is no basis for the organization's contention that when the supervising officer conducts the investigation, the **employee** investigated is deprived of a fair investigation. **In** any event, in the instant case, the carrier does **not** understand the employees' objection against having the person **who** signs the notice of charges appear as a witness against the claimant. With regard to the employees' contention that the supervising officer who signs the notice of discipline is someone **who** rendered the decision of dismissal, there is **no** support for such

a statement. The one who rendered the decision **was** the investigating officer, not the one who notified the claimant of the decision."

This Board has been clear in its **refusals** to allow Organization6 to go behind the record **as** established on the property and to advance arguments that were aimed **at** showing a prejudicial sequence of events, contrary to unrebutted matter6 of **record**. That same exclusion must control here. This board will **consider** that the documents of **record** are accurate on their **face** and **we** will not **speculate** as to what may, or may not, **be** a mere formality.

After thorough **review** of the entire record and the **authorities** cited by the parties, the Board is of the opinion that a combination of procedural errors existed **which**, considered in **toto**, adversely affected Claimant's rights - to his prejudice.

Without regard to **the remedy** available solely to cure the violation of the time limit rule, **we** note that the **cause** of the delay was to obtain a "verdict" from the staff of the highest appellate officer. To be sure, Carrier Gtates that **the** word "verdict" is being used in an **improper** sense and it denies **that any** functions were usurped. But, as noted above, **we** are limited to the **events** of record; which clearly indicate that certain function6 were performed in a **manner** not prescribed by the Agreement. **While we find** no difficulty with a charging officer being a witness, when we note that the same person then (according to the record before us) renders the discipline and sits in an appellate capacity - and when we note that said matters were raised for consideration on the **property** - we feel that there should be some consideration given to those factors when we **view** the overall **procedural** question.

We are **also** mindful of the fact that the charge **was** incorrect as to alleged time. **After certain** testimony **was** received at the investigation, the individual who brought the charges dismissed the inconsistency:

"Q. Approximately **what** time do you say that the cat was **killed** when on the charges it states on or about **10:30** a.m. and this man stated he **was** on the main line working on the burro crane?

A. It must have **been** an error in typing because everything that has gone on so far is between **9:15** and a quarter to **10:00**.

Q. It says on the charges '**10:30**'.

A. That couldn't be right - it must have been a typographical error or something."

We do not comment upon the possible end result concerning each isolated **allegation** of error. But, in a hotly contested case **concerning** severe questions of credibility, **we** feel that the **combination** of errors, considered in their entirety, were prejudicial to Claimant, and we will sustain.

Although numerous **Awards** of this **Board** have refused to **grant** interest, we find that Carrier never contested that portion of the claim on the property, although **Claimant** had raised and pursued the matter. Under the **circumstances**, it is not improper to sustain the claim in **its** entirety.

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

That the parties valued oral hearing;

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

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

That the Agreement **was** violated.

A W A R D

Claims **sustained.**

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1976.