

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
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(Texas Mexican Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10388) that:

1. The Carrier violated the Rules Agreement effective June 1, 1972, as amended, when they arbitrarily suspended Mr. Carlos M. Vara, Laredo, Texas, from service. That the Company displayed a complete and utter abuse of discretion; denied him a fair and impartial investigation; rendered excessive and unwarranted discipline and failed to allow him a fair lines of appeal.

2. The Company shall be required to reimburse Carlos M. Vara the amount equal to all wages lost; restore all agreement rights he was deprived of during his suspension period, including but not limited to health and welfare coverage; and clear his personal record of any mention of this alleged disciplinary incident."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On June 2, 1988, Claimant was working as Cashier in the Carrier's Laredo, Texas, freight office with hours from 9:00 A.M. to 6:00 P.M. Claimant also was the Organization's Division Chairman in which capacity Claimant dealt with the day-to-day administration of the schedule Agreement between the Organization and the Carrier.

Claimant entered the freight office at approximately 8:40 A.M. When the freight office Supervisor asked Claimant what he was doing in the freight office before starting time, Claimant replied that he was tired of the Supervisor allowing a freight agent, who was nearby in the office at that time, to

begin work early and stay late. Claimant's comment apparently provoked a thirty-second exchange between Claimant and the Freight Agent which ended in a loud argument. The Supervisor intervened. Claimant then told the Supervisor that the Supervisor did not know what he was doing and followed the comment with a statement in Spanish which when used in that context meant that the Supervisor was worthless. The Supervisor informed Claimant that if he had a Claim concerning the matter he should file it. The Supervisor then instructed Claimant to leave which he did, returning at his starting time. Other employees who worked in the freight office were present during the exchange.

On June 3, 1988, the Carrier notified Claimant to appear for formal Investigation on the charge of violating various Rules. The Investigation was held on July 27, 1988. By letter of August 3, 1988, the Carrier notified Claimant that he was suspended for two weeks as a result of the Investigation.

The Organization raises a number of procedural objections to the Investigation and discipline.

The Organization maintains that the transcript of Investigation reveals prejudgment by the Carrier. Specifically, the Organization accuses the Hearing Officer of improper questioning and issuing statements prejudicial to Claimant. Our review of the transcript of Investigation does not support the Organization's contention. While some questions from the Hearing Officer were leading to some extent, that appears to have been the result of inartful wording rather than a conscious effort to build the record against Claimant. Claimant in particular was afforded great latitude in questioning witnesses, and several of Claimant's questions which properly were objectionable as statements or testimony by Claimant went unchallenged by the Hearing Officer. We find no statements by the Hearing Officer to be of such nature as charged by the Organization. Accordingly, we cannot agree with the Organization that the Carrier denied Claimant a fair and impartial Investigation.

The Organization maintains that Claimant was denied a meaningful appeal. The Organization emphasizes that the Carrier altered the grievance appeal process after the Claim was filed. The Organization specifically objects to the fact that the Carrier officer who brought the charges against Claimant also was the Carrier officer who handled the first level of appeal by Claimant. The record reveals that the Carrier, which is small and has officers performing a variety of functions, altered the appeal process in order to eliminate officers who testified at the Investigation from the appellate process. The Board has ruled that it is not a reversible procedural error for the Carrier officer who prefers charges against an accused to act as the officer in the first step of the appellate process. See Third Division Awards 25149, 25863 and 27610. Accordingly, we find no basis for the Organization's position on this point.

The Organization accuses the Carrier of being arbitrary and capricious as well as abusing its discretion. Our review of the record in this case reveals no bases for these contentions. We find no such aspects to the Carrier's handling of this case.

The Organization maintains that the Carrier disciplined Claimant for his union activities. The record does not support the Organization's contention. Claimant's behavior exceeded the bounds of propriety. Such behavior was witnessed by other employees. The Carrier's belief that Claimant's behavior disrupted the work force was a reasonable one. Claimant was an employee subject to discipline.

Turning to the merits, the Organization maintains that the discipline was based upon inconclusive evidence and therefore is defective. We cannot agree. All participants in the argument on June 2, 1988, in the freight office testified at the Investigation as did other employees who witnessed the argument. The fact that Claimant's version of the argument differed somewhat from the versions testified to by others is not significant. It is the Carrier's obligation to resolve testimonial differences and credibility conflicts. In the absence of evidence that such resolution was the product of some improper motivation by the Carrier or that it conflicts with substantial objective evidence, the Carrier's credibility determinations will not be disturbed. We find no basis upon which to disturb the Carrier's credibility determinations in this case.

The Carrier's Vice President and General Manager also testified at the Investigation. He recounted previous incidents involving Claimant similar the one at issue in this case. It is a fair characterization of that individual's testimony that he had warned Claimant not to come into the freight office before the starting time of his position and not to disrupt the work of employees in that office. Claimant's conduct on June 2, 1988, was in direct violation of that order and constituted insubordination. We also believe that Claimant's comments directed toward the freight office Supervisor constituted insubordination. Accordingly, we must conclude that the record in this case substantiates the charge of insubordination.

We cannot agree with the Organization that the discipline assessed was harsh or excessive. Even though Claimant has many years seniority and worked in the freight office without incident for many years, the fact remains that Claimant had been disruptive of the work force in the freight office. A warning to discontinue such activity apparently had no effect. In our view, a two-week suspension to impress upon Claimant the necessity to correct his errant behavior was not inappropriate.

In the final analysis we find no basis upon which to disturb the discipline in this case.

A W A R D

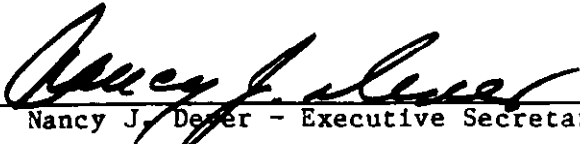
Claim denied.

Form 1
Page 4

Award No. 29241
Docket No. CL-28896
92-3-89-3-400

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 18th day of May 1992.