

Award No. 1302

Docket No. 1308

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

RAILROAD YARDMASTERS OF AMERICA

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim and request of the Railroad Yardmasters of America that—

Yardmaster J. L. Eberts who was dismissed from the service on December 2, 1957, be reinstated to status of yardmaster with seniority and all other rights unimpaired, with pay for all time lost as yardmaster.

OPINION OF BOARD: The filing with the Director of Personnel, on December 20, 1957, of an appeal from the Division Superintendent's decision of December 2, 1957, was in full conformity with the dictates of Rule 19 of the applicable Railroad Yardmasters of America Agreement.

Neither was it contended on the property that the appeal was not perfected because no opportunity was afforded the Division Superintendent to reconsider his decision before progressing the case to the next highest official nor did the alleged understanding concerning said manner of processing appeals ever achieve the status of a formal amendment to Rule 19. In determining whether or not compliance was had with the procedure designated therein, the language of Rule 19 must be accepted at face value.

Further, when raised for the first time in Carrier's submission to this Board, this objection comes too late.

It must be concluded that this case was handled in accordance with Section 3, First, paragraph (1) of the Railway Labor Act, as amended. Accordingly, the proposition that this Board lacks jurisdiction to adjudicate this dispute is wholly untenable and the same must be, and hereby is, totally rejected.

Although it is indeed peculiar, to say the least, both for DeVol to have signed a letter in the capacity of Trainmaster, on the day following his purported promotion to Assistant Superintendent, and for the Carrier to have delayed a full week in making an announcement of the upgrading, still

there is nothing concrete to refute the Carrier's assertion that DeVol was actually a full fledged Assistant Superintendent at the time he conducted the investigation.

Nothing in this record serves to connect claimant with responsibility for yard crew's sleeping while on duty. Not only does the remark, attributed to the engine foreman of the crew involved, to the effect that claimant promised to awake them at the conclusion of the lunch period, come from a person who was primarily interested in getting himself off the hook, but also the statement was specifically repudiated by the individual concerned.

By no stretch of the imagination has it been demonstrated that any portion of the yard crew's blame rubs off on claimant. It has not been proved that he knew or should have known of the wrongdoing and condoned or tolerated same. His testimony shows that during the interval between 4:30 A.M. and 4:55 A.M. he was so completely engrossed with his own yardmaster job duties as to make it impossible for him to keep the defaulting yard crew under constant surveillance. When otherwise occupied with his job demands, it is not a failure to exercise supervision for a yardmaster to rely on the employes under his jurisdiction to faithfully observe the lunch period time limits. To say that as yardmaster, claimant should be considered as a guarantor of the yard crew's good conduct and be held personally accountable for their individual misdeeds is both fallacious and unrealistic.

Taking into account the additional fact that claimant has served this Carrier continuously for more than nineteen years, throughout which period his work record has remained unblemished, it is readily apparent that the penalty of discharge was arbitrary, capricious and utterly unjustified.

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

The carrier and the employe involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

AWARD

Claim and request sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **FOURTH DIVISION**

ATTEST: Patrick V. Pope
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1958.