

NATIONAL RAILROAD ADJUSTMENT BOARD**FOURTH DIVISION**

Referee Jacob Seidenberg

PARTIES TO DISPUTE:**RAILWAY PATROLMEN'S INTERNATIONAL UNION, AFL-CIO****THE CHESAPEAKE AND OHIO RAILWAY COMPANY**
(Pere Marquette District)**STATEMENT OF CLAIM:**

(a) That the Carrier's action in suspending Patrolman Chester Tunk for a period of thirty days without pay was unwarranted, unjust and violative of rules of agreement.

(b) That the claimant shall have his record cleared and be compensated for all time lost.

OPINION OF BOARD: On February 24, 1966 the Claimant Patrolman, who was also a Local Chairman wrote a letter to Mr. J. C. Musser, Carrier's Chief Special Agent, complaining about Superintendent of Police Gasper. The letter stated among other things, that it was difficult to handle complaints with Mr. Gasper; set forth the details of a Schroeder Grievance; said that another supervisor with 25 years seniority left the Carrier's employ when he was informed that Mr. Gasper had been appointed Superintendent, and it concluded that Mr. Gasper was hot tempered, made snap judgments, carried a chip on his shoulder, and was not qualified for consideration as a Superintendent of Police.

Mr. Musser received the Claimant's letter on February 28, 1966 and upon learning that other persons on the property had also received copies of the aforementioned letter, wrote on March 1, 1966 to the Claimant directing him to appear for a hearing on March 10, 1966 to face the charges of:

"disrespect to a Superior Officer, conduct subversive of good order and the discipline of the force, and with disparaging the actions of a Superior Officer."

On March 10, 1966 the hearing was held with Mr. Musser acting as the Hearing Officer. On March 18, 1966 Mr. Musser wrote the Claimant that he had been found guilty as charged and that discipline in the form of a 30 day suspension was being assessed against him.

Both parties have argued extensively many substantive and procedural grounds for sustaining and denying the discipline. The Board need only consider one.

The Organization contends that the proceedings were procedurally defective because Mr. Musser acted as complainant, hearing officer, prosecutor, and judge in this matter. On the other hand, the Carrier maintains that the Organization took no exception to the procedure in the handling of this case on the property, and therefore it should not now be considered by this Board. It further states that the same procedure is followed, where practicable, in all discipline cases on the property. It has the uniform practice of having the officer conducting the hearing, make the decision and issue the discipline in all cases where it is possible to do so. It states that there is no schedule rule that provides that the officer signing the hearing notice may not conduct the hearing, consequently there is no basis for objecting on this account.

The Board finds that the Carrier's procedure in this case is basically violative of its contractual obligation to afford the Claimant a fair and impartial trial as stated in Rule 12 of the Schedule. A hearing which is conducted by the same individual who preferred the charges, weighed the evidence, determined the guilt, and imposed the sanction is not a fair and impartial hearing. The record shows that the Organization throughout the course of the hearing as well as at its conclusion, protested that the hearing was not being conducted in a fair and impartial manner. But without ruling specifically whether there was a timely objection entered, the record is clear that the procedural defects were so material that they completely vitiated procedural due process, and the discipline must fall.

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.

The parties to said dispute waived right of appearance at hearing, but were granted privilege of appearing before the Division, with the Referee sitting as a member thereof, to present oral argument.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Muriel L. Humfreville
Secretary

Dated at Chicago, Illinois, this 16th day of May, 1967.

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