

Referee Harold M. Weston

PARTIES Railroad Yardmasters of America
TO
DISPUTE: The Chicago River and Indiana Railroad Company

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

Yardmaster M. R. Jackson be allowed one day's pay at the appropriate yardmaster rate for May 21, 1970 and each day thereafter until returned to service as yardmaster.

OPINION OF BOARD: Claimant a yardmaster with substantial seniority in that class was disqualified as yardmaster by Terminal Superintendent Fraser on grounds that he did not protect a carload of meat, failed to correct conductor's non-compliance with clean car requirements, neglected to supervise crews adequately and betrayed a "lackadaisical attitude."

Rule 14 of the Yardmasters' Agreement provides that "No yardmaster shall be disciplined or dismissed without a formal investigation - - - ." Carrier contends that Claimant was not "dismissed" and that the discipline rule is inapplicable. We disagree.

To disqualify an employe as yardmaster and adversely affect his seniority in that classification is, without any question, the equivalent of dismissal as yardmaster. The fact that he might or might not be able to assert seniority in a lower rated position is not pertinent for he has been effectively removed from the yardmaster ranks.

Moreover, the derelictions with which Claimant is charged must be established by just as clear and competent proof as is required in any discipline case. If the contrary were true, inefficiency could be used as a relatively simple vehicle for termination of employes. It is entirely clear that an investigation under Rule 14 is required in the present case.

A hearing was accorded the Claimant and he was duly represented there and afforded a fair opportunity to present his case. We do not agree with Petitioner that the fact that Superintendent Fraser, who had issued the charges against Claimant, also served as hearing officer necessarily constitutes reversible error. However, Fraser's subsequent contentions and disputes with Claimant during the course of the hearing were scarcely consonant with the role of Hearing Company. We appreciate the fact that he engaged in these discussions because he believed that an impartial investigation was not required and that Rule 14 did not apply but we have held to the contrary and find that he served more as a witness and prosecutor than as a hearing officer. As evidence of that fact, we quote the following statement by him that appears in the transcript of the hearing:

"Mr. Jackson is not right if he told you (Jackson's representative, Mr. Greenwood) that I have called Mr. Jackson on numerous occasions more so recently than in the months of January, February and March, due to the increasing business on the CR&IRR. Never did I tell him to pinpoint any engine. The questions I asked Mr. Jackson were are you going to get this done. That is when I receive the "I don't know" or "if he gets that far" answer. x x x."

The transcript of hearing indicates that Superintendent Fraser, the hearing officer, had some predisposition in this case and served to some extent as a witness. Without his participation, the evidence in support of Carrier's charges against Claimant is not substantial or persuasive.

In the light of these considerations we will sustain the claim.

FINDINGS:

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

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

E. A. Killeen

E. A. Killeen
Secretary

Dated at Chicago, Illinois, this 8th day of June, 1971.