

Referee Robert M. O'Brien

PARTIES The Railroad Yardmasters of America
TO
DISPUTE: The Central Railroad Company of New Jersey
 (R. D. Timpany, Trustee)

STATEMENT Claim and request of Railroad Yardmasters of America that:
OF CLAIM: Yardmaster Thomas L. Pearsall be reinstated as yardmaster
 with seniority and all other rights unimpaired and be paid
 for all time lost, including rest days, vacation and sick
 pay allowance since he was disqualified on November 29, 1971.

OPINION This is a discipline case wherein claimant, following a
OF BOARD: hearing and investigation, was disqualified as a Yardmaster
 for failure to properly supervise the yard operation under
 his jurisdiction and absenting himself from his office one hour or more
 before the end of his tour of duty.

The record of the hearing and investigation reveals that on the claim date, claimant was assigned as yardmaster, west end, Yard B, Elizabethport. Car Foreman Kuchynski testified that at 9:15 P.M. that day the Chicagoan arrived at Elizabethport, coupled to the head end and doubled to the train on track 10. However, the air hose had not been coupled on the cars to be picked up and as a result of this the Chicagoan was delayed leaving Elizabethport. He further stated that according to his men no one told them about track 10.

Claimant testified that at 2:30 P.M. he received a report that Car Inspectors were notified that tracks 10 and 20 were on the air and that everything was O.K.

It is axiomatic that in claims of this nature Carrier has the burden of proving by competent evidence the charges brought against the employee. While as a rule this Board is reluctant to substitute its judgment for that of the Carrier we are compelled to do so whenever Carrier fails to prove the charges by substantive evidence.

A review of the record before us reveals that Carrier has failed to sustain this burden imposed upon it. Claimant testified that Car Inspectors

were notified that track 10 was on the air. Car Foreman Kuchynski in an attempt to refute this, testified that the Car Inspectors had told him that they were not so notified. We do not find this hearsay testimony probative on the issue. If Carrier wished to rely on the fact that Car Inspectors were not notified they should have been called to testify at the hearing. We find that Carrier has failed to prove by substantive evidence that claimant did not properly supervise the yard operation under his jurisdiction on this date. Nor does the record reveal that claimant had unduly absented himself from his office prior to the end of his tour of duty. He explained fully where he was and Carrier has not been able to refute this.

This Division held in Award 1850 that "The record in a discharge case should be clear and complete and while this Board ordinarily will not substitute its judgment for that of Carrier in matters of discipline, it has no alternative but to do so when the record is defective or the Carrier's action is unwarranted." We find that reasoning applicable to the claim before us and conclude that Carrier has not proven the charges against claimant. We are thus left no alternative but to allow the claim.

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 thereon.

A W A R D

Claim sustained.

Form 1

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Award No. 2915
Docket No. 2904

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: *E. A. Killeen*

E. A. Killeen
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1973.