

Referee Robert M. O'Brien

PARTIES TO DISPUTE: The American Railway Supervisors Association
Central Railroad Company of New Jersey

STATEMENT OF CLAIM: It is the claim and request of the Petitioning Organization that:

1. Respondent Carrier violated Rule 17 (b) of the Agreement effective June 13, 1972 when on June 1, 1973, following Investigation held on May 22, 1973, Mr. Martin Golden, Track Supervisor was assessed a discipline of thirty (30) days actual suspension.
2. Carrier shall be required to restore Mr. Martin Golden to his position of Supervisor of Track with all of his Seniority, Health and Welfare Benefits and Vacation rights restored to him unimpaired, his record cleared, and pay Mr. Golden the salary denied to him through this violative, arbitrary and discriminatory action of the Carrier.

OPINION OF BOARD: We have before us a discipline claim wherein claimant, a Track Supervisor, was assessed 30 days actual suspension for certain actions which constituted, in Carrier's opinion, dereliction of duty as a Supervisor. In discipline claims such as the one before us, the Board is called upon to review the transcript of the Hearing in order to ascertain, first whether claimant was afforded a fair and impartial hearing, second whether the charges against him were supported by substantive evidence, and finally, if so, was the discipline imposed commensurate with the proven offense.

In conducting a hearing Carrier must not only provide the appearance of impartiality, but must provide it in fact. A cornerstone of this due process requirement dictates that the one conducting the hearing must do so in a fair, impartial, and unbiased manner. It is our opinion that such was not the case in the claim before us.

The record reveals that Mr. Gerace, the Carrier official conducting the hearing, was also cast in the dual capacity of prosecutor of the charges against claimant. While such dual function does not, per se, constitute bias or prejudgment, when this situation exists the hearing officer must take special pains to isolate his incompatible roles. Unfortunately, Mr. Gerace failed to do so herein.

The transcript reveals that Mr. Gerace asked leading questions of Carrier's witnesses, commented on the evidence, and

admonished claimant on several occasions for not obtaining instructions in writing from his Supervisor. For example, in response to an objection by Mr. Maschger, claimant's representative at the hearing, Mr. Gerace interjected "... we can supply conclusive proof in documents to authenticate the statements and charges being made by Mr. Allen." He also made a statement that Mr. Davis will be willing to authenticate Mr. Allen's testimony. Further on, when Mr. Maschger objected to the testimony of Mr. Allen relative to certain dates in 1972, Mr. Gerace commented, "That is understandable why you were referring back to the dates that you so stipulated". While we do not wish to burden this opinion with a multitude of quotes from the transcript we are convinced that a reading of the transcript will reveal that Mr. Gerace failed to conduct the hearing in a fair and impartial manner. He consistently commented on the evidence, lead Carrier's witnesses, and indicated throughout his questioning of claimant prejudgment of the charges.

Concluding that claimant was not afforded a fair and impartial hearing we are left no alternative but to sustain the claim without reaching the merits thereof. However, this Division has firmly established that Health and Welfare benefits are not a proper component of damages in discipline claims and we agree. Therefore, they will not be allowed.

FINDINGS:

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

The carrier and the 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 were given due notice of hearing thereon.

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

A W A R D

Claim sustained per the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment Board

By: *Rosey L. Stone*
Assistant Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1974.