

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISIONAward Number 3746
Docket Number 3741

Referee Kay McMurray

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Louisville and Nashville Railroad Company

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

Claim is made in behalf of Extra Yardmaster L. H. Major, New Orleans, for one day's pay at the current agreement rate for November 19, 1978 lost as a result of the investigation held on that date and one day's pay for each day held out of service as a result of that investigation commencing with December 14, 1978 and continuing until reinstatement.

OPINION OF BOARD: Claimant, Mr. L. H. Major, was assessed a ninety day actual Suspension from December 14, 1978, through March 14, 1978.

The penalty was imposed following an investigation hearing conducted on November 15, 1978. The hearing was conducted in accordance with statutory requirements and all parties were fully allowed to make statements, present witnesses and cross examine.

At the outset, the Organization raises a substantial procedural objection occasioned by the fact that the person who signed the letter of discipline also responded to the second letter of appeal which was directed to him in accordance with his position in the management hierarchy. It views his letter of discipline as evidencing a prejudgment of guilt which denied the claimant of the independent consideration to which he was entitled under the appeals process.

Rule 7(c) of the contract between the parties provided in explicit terms that the claimant shall have the right of appeal to each higher Carrier officer up to and including the Assistant Vice President-Personnel and Labor Relations. It is fundamental to the integrity of the appeal process that the decision maker give independent and non prejudicial consideration to the issue before him. Obviously that requirement cannot be met by the party who rendered the original judgment. This Board is constrained statutorily from any modification of the agreement and is bound to uphold the integrity of the process. Claimant's right of appeal was impaired by the Carrier's action and we have no alternative but to sustain the claim.

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 respectfully 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 allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

Executive Secretary
National Railroad Adjustment Board

By: 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1980