

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Southern Railway Company

Dispute: Claim of Employees:

1. That the Southern Railway System unjustly dismissed Electrician B. L. North from service without just and sufficient cause, and in so doing deprived him of his rights and earnings from February 3, 1978, until such time as he is restored to service.
2. That the Electrician B. L. North was not afforded a fair and impartial hearing in violation of the current agreement.
3. That accordingly, Southern Railway System be ordered to restore Electrician B. L. North to the Carrier's service with seniority rights unimpaired and compensated for all wage loss commencing with the date of his dismissal, February 3, 1978, and all other benefits and rights until such time as he is restored to service.
4. That the Southern Railway System be further ordered to make Electrician B. L. North whole with respect to all rights, privileges and benefits associated with his railroad employment, such as, but not limited to vacation, health and welfare, and insurance benefits.

Findings:

The Second 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.

Parties to said dispute were given due notice of hearing thereon.

The record shows that claimant was hired by the Carrier on September 16, 1963, as an electrician trainee. He later advanced to the position of electrician, and resigned from all service in April, 1965. He was rehired as an electrician on November 12, 1966, and established that seniority date at Chattanooga, Tennessee. On June 3, 1967, he was promoted to Assistant Foreman at Chattanooga. In October, 1969, claimant was promoted to the position of General Foreman at Ludlow, Kentucky, an official position exempt from any labor agreement. In July, 1972, he began

working in the Maintenance of Way Department as Supervisor, Highway Equipment, also an official position. He served in that capacity while living in Atlanta, Georgia and also in the Chattanooga, Tennessee, area. While he came under the supervision of Chief Engineer of Maintenance of Way Gangs, due to the travel involved in his assignment, he set his own schedule, made his own travel and lodging arrangements, and did not have contact with his superiors on a day-to-day basis.

The Carrier states that its Police and Special Service Department, as a part of its function, is called upon to investigate various activities that may be detrimental to the Carrier's interest. In one such investigation conducted by Carrier's Lieutenant of Police into incidences involving supervisors at outlying points dealing with local suppliers or vendors, it became necessary to determine the whereabouts of claimant during a given period of time. As part of his investigation, the Lieutenant obtained claimant's expense account forms submitted from January, 1976, through December, 1977. Evidence was discovered which lead the Lieutenant to believe that there were several irregularities in claimant's expenses. The irregularities and improprieties fell into three categories:

1. Claimant allegedly claimed expenses for lodging when none occurred.
2. Claimant allegedly submitted bogus or altered receipts in support of expenses claimed; and
3. Claimant allegedly submitted altered receipts for airline trips taken on Company business.

The Lieutenant and Superintendent of Police interviewed the claimant on January 27, 1978, and confronted him with the evidence obtained. It is alleged that during that interview claimant admitted that certain receipts had been made up and falsified and attached to his expense record.

On January 31, 1978, Assistant Vice President, Maintenance of Way and Structures, H. L. Rose, dismissed claimant from service.

Upon being dismissed from his position of Maintenance Supervisor, Highway Equipment, claimant attempted to exercise his seniority as electrician at Carrier's Chattanooga Diesel Shop. After conferring with the Maintenance of Way Department, Assistant Shop Manager J. L. Gregory determined that the matter must be investigated prior to claimant returning to work as an electrician. The disciplinary proceedings were conducted strictly in conformity with Rule 34 of the applicable Agreement. Some contention has been raised as to the proper officer to conduct the proceedings. As claimant was attempting to return to work in the Chattanooga Diesel Shop, the Board concludes that Mechanical Department officials were the proper ones to conduct the proceedings rather than Maintenance of Way officials, who had concluded claimant's employment in that Department. So far as the preliminary investigation was concerned, we find no violation of the Agreement. There is no rule requirement that a charge or charges be preferred prior to the preliminary investigation. On February 7, 1978, claimant was notified by Assistant Shop Manager Gregory:

"This will confirm the preliminary hearing conducted under Rule 34(a) of the current Shop Crafts Agreement on February 6, 1978, resulting in your dismissal from the services in all capacities. At the conclusion of the hearing, you requested that a formal investigation be held in accordance with Rule 34(c) of the current Shop Crafts Agreement. A Formal Investigation will be held in the Conference Room of the Diesel Shop Manager's office at Chattanooga, Tennessee at 10:00 A.M., Saturday, February 11, 1978.

You were charged with conduct unbecoming an employee in that during the period January 1, 1976, through December 31, 1977, you repeatedly submitted false expense accounts: repeatedly claiming expenses for lodging when none even occurred; repeatedly submitting bogus or altered receipts in support thereof; and submitting altered receipts for airline trips alleged to have been taken on Company business. These items were identified to you by Lieutenant John Thornburg of Carrier's Police and Special Service Department in his discussion with you on Friday, January 27, 1978.

At the investigation you have the right to be represented by your duly accredited representatives and to present witnesses in your behalf."

At the formal investigation held on February 11, 1978, conducted by the Manager Diesel Shop, substantial evidence was presented by Chief Engineer Maintenance Gangs Wilson and Special Agents Gardner and Thornburg in support of the charges against claimant. The claimant was present throughout the investigation and was represented. A number of technical objections were raised by claimant's representatives. The Board has carefully considered the objections and finds that none of them was of sufficient significance to nullify the proceedings.

In discipline cases the parties and this Board are limited to the evidence presented at the investigation. The claimant refused to participate in the investigation and refused to answer questions directed to him by the conducting officers. We consider such action on the part of the claimant to be serious. Numerous awards of the Board have held that accused employees may not refuse to answer questions in investigations. Some have held that in such an instance, the inference may properly be drawn that if the questions were answered, the answers would be to the detriment of the accused. Claimant's actions in this respect were at his peril. The purpose of an investigation is to develop the facts and not technicalities.

Based on the entire record, the Board finds that the Carrier has made a bona fide case against the claimant, which has not been rebutted or refuted. As this Referee stated in Third Division Award No. 22745:

"It is a generally accepted tenet in the railroad industry that dishonesty is a dismissal offense. There is no proper basis for this Board to interfere with the discipline imposed by the Carrier."

Form 1
Page 4

Award No. 8762
Docket No. 8492
2-SOU-EW-'81

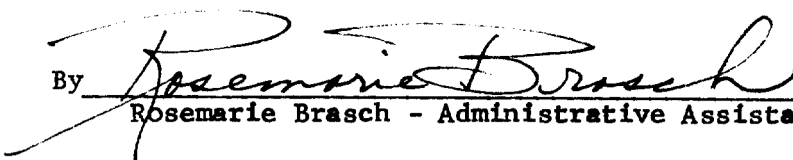
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of September, 1981.