

Award No. 14333
Docket No. CL-15499

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

MILWAUKEE-KANSAS CITY SOUTHERN JOINT AGENCY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5736) that:

(1) Carrier violated the current Clerks' Agreement when it imposed a suspension of ten (10) working days upon Mr. W. D. Woody.

(2) Mr. W. D. Woody shall be reimbursed for wage loss sustained on March 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29, 1964: and his service record cleared of all charges.

OPINION OF BOARD: On February 15, 1964, Claimant, W. D. Woody, Local Chairman, received notice that an investigation would be held to determine the facts and place Claimant's responsibility for attempting to intimidate one of Carrier's employees, Sexton, by discouraging him from learning more about Carrier's operations to the detriment of the Carrier.

On February 24, 1964, an investigation was held and witnesses were called and interrogated including the complaining witness, Sexton. On March 2, 1964, Claimant was notified that the charge had been substantiated and he was suspended for ten days.

Carrier contends that Claimant as Local Chairman permitted his Union activities to interfere with his loyalty to the Company and that his conduct was detrimental to the best interests of his Employer.

It is Claimant's position that on the afternoon of January 24, 1964, Sexton's assignment ended at 3:00 P.M. and he was supposed to go off duty but he operated the IBM Machine after that as a continuation of work he had started while on duty on his regular assignment and had not been able to complete and performed this work for approximately 35 minutes beyond 3:00 P.M., that several employees complained to Claimant, as Local Chairman, about Sexton's habit to work overtime, and particularly the incident on January 24, 1964; that this occasioned him as the Local Chairman to call Sexton on the telephone when neither of them was on duty. It was the alleged conversation between the Local Chairman and Sexton which formed the basis of Carrier's charge against the Claimant. Sexton denied at the investigation that he had worked overtime on January 24 though he admitted he had remained in the vicinity of his place of duty after 3:00 P.M.

What Claimant was essentially charged with was disloyalty to his Employer. Sexton was the only one who testified directly as to what had occurred

between the Claimant and himself. After his conversation with Claimant, Sexton talked to a number of Company employees in reference to his conversation with him. An attempt was made by Carrier to corroborate his testimony by a recital of conversations he had had with others. This evidence was strictly hearsay and of no evidentiary value.

Opposed to Sexton's uncorroborated testimony was that of four clerks who were employed and present at the site where Sexton was employed on January 24 and all of them testified that Sexton actually did work 35 minutes overtime on IBM machines and that the incident was reported to the Local Chairman. The telephone conversation took place when neither of the participants was on duty and there is a direct conflict as what transpired during the conversation.

In Award No. 39 Special Board of Adjustment No. 374 (Pennsylvania Railroad Company) the following conclusion was reached: "We will sustain this claim for one reason: No man should be found guilty of a disciplinary charge solely on the unsubstantiated evidence of a sole witness."

We are not, however, arriving at our conclusion on that basis. On the facts as developed at the investigation and in this record we cannot say that Claimant's conduct transcended the Scope of his function as Local Chairman. It cannot be said that he disregarded his obligation for loyalty within the terms of this employee-employer relationship as governed by the Agreement nor as expected in a normal employee-employer relationship.

It follows, consequently, that there was no basis for the discipline assessed and that the suspension should be annulled, that Claimant's personnel record should be corrected to show that he has been cleared of the charge, and that he should be compensated for the time he has lost.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April 1966.