

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

George S. Ives, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION EMPLOYES UNION
CHICAGO GREAT WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago Great Western Railway, that:

1. Carrier improperly dismissed L. J. Anderson from service.
2. All charges against L. J. Anderson shall be cleared from his record and Carrier shall return L. J. Anderson to his former position of agent-telegrapher at Lorimor, Iowa, and compensate him for all wages lost and reimburse him for all expenses incurred and other benefits which would have been paid by The Travelers Insurance Company.

OPINION OF BOARD: On February 19, 1965 Carrier dismissed Claimant L. J. Anderson from service after a formal investigation in which he was charged with violating certain Rules and Regulations of Carrier pertaining to the use and protection of the Carrier's property. Claimant at the time of his dismissal from service was employed as Agent-Telegrapher at Lorimor, Iowa and had been in the service of the Carrier for approximately nine years.

The essential facts involved in this dispute are not in issue. Claimant parked his mobile home on Carrier's property at Talmage, Iowa, for a period of approximately 19 to 20 months prior to his dismissal from service without a lease. He also arranged for a utility Company to provide electricity to his mobile home and a meter was installed therefor on the Carrier's property. Claimant also had a deep freeze food refrigerator unit installed in Carrier's depot building at Talmage, Iowa, on or about July 8, 1964 for his personal use and without authority from Carrier. Said deep freeze refrigerator unit was then connected to Carrier's electric supply outlet and meter at Talmage, Iowa for approximately seven months during which time electricity consumed by the unit was charged to Carrier's account. The record discloses that Claimant personally paid only one electric bill for the month of August 1964 during the entire period that electrical service was rendered by the utility Company. Claimant also stored various other personal household effects in Carrier's depot in addition to the deep freeze refrigerator unit without authority or benefit of lease.

Claimant requests reinstatement with back pay on the grounds that the charges against him were improper, the hearing was not fair and impartial and that the evidence adduced did not support the discipline assessed by Carrier. Employees on behalf of Claimant assert that Carrier acquiesced in Claimant's occupancy of its property over an extended period of time before the instant dispute and that the notice of charges was not prompt and timely within the meaning of Rule 11 (c) of the Agreement between the parties. Employees further contend that Claimant had oral permission to park his mobile home on Carrier's property which was denied by Carrier at the hearing. Em-

ployes also assert that Carrier did not enforce the Rules with equal vigor against other employees in the past but no probative evidence was offered in support of this contention.

Carrier's position is that Claimant's admission of the undisputed facts fully supports the disciplinary action taken and that a cursory examination of the various rules involved demonstrates their applicability and the Claimant's violations of said rules. Carrier denies acquiescence and contends that appropriate action was taken promptly following a full investigation of the charges against the Claimant.

The controlling provisions of the Agreement between the parties and the Rules and Regulations of the Carrier's Operating Department are as follows:

"Rule 11. (a) Except as otherwise provided in this rule employees will not be disciplined or dismissed from the service without a hearing, and may be represented by Local and/or General Chairman of The Order of Railroad Telegraphers at such hearing if they desire.

(b) Hearing in advance of discipline will not be required in minor cases which are investigated by correspondence, and in which the discipline which may be assessed does not exceed ten (10) demerit marks, unless the employee requests a hearing.

(c) Employees charged with offenses involving discipline, suspension or dismissal will be promptly advised of the precise charge or charges, and no employee will be disciplined (except as provided above), suspended or dismissed without a fair and impartial hearing of such charge or charges within ten days of date of advice of such charge or charges, but the employee will be given a reasonable opportunity to secure necessary witnesses. This will not prevent immediate suspension in proper cases pending a hearing. At a hearing all testimony and evidence will be submitted in the presence of the employee and his representative. An opportunity to question witnesses will be permitted. Copy of the transcript of the hearing and of all testimony and evidence will be furnished the employee and his representative upon request. A decision will be rendered within ten days after completion of the hearing.

(d) The right of appeal by employees through their representatives in the regular order up to and including the Chief Operating Officer designated by the Carrier to whom appeals may be made, is hereby established. If an appeal is taken, it must be filed with the next higher official and a copy furnished the official whose decision is appealed within fifteen days after date of decision.

(e) If the final decision decrees that the charges against the employee are not sustained, the record shall be cleared of the charge; if suspended or dismissed, the employee will be returned to his former position and compensated in the amount he would have earned had he not been suspended or dismissed, less the amount earned in any other service.

(f) An employee who considers himself unjustly treated shall have the same right of hearing and appeal as provided for above if written request is made to his immediate superior within thirty (30) days of the cause for complaint."

GENERAL RULE 'B'

Employees must be conversant with and obey the rules and special instructions. If in doubt as to their meaning they must apply to proper authority for an explanation.

RULE 701 (1)

Employees who are careless as to safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or whose conduct and handling of personal obligations causes criticism and loss of good will from patrons and the public, will not be retained in the service.

RULE 705

Employees must exercise care and economy in the use of railroad property, and when leaving the service, or upon demand by proper authority, must return property entrusted to their care.

RULE 706

Unless specially authorized, employees must not use the railroad's credit and must neither receive nor pay out money on the railroad account. Property of the railroad must not be sold nor in any way disposed of without proper authority. All articles of value found on railroad property must be cared for and promptly reported.

STATION AGENTS

RULE 750 (1)

They are in charge of the Company's interests at their respective stations, of its buildings, sidings and grounds within the station limits, of the station appliances and equipment, of its accounts and records, of the material and supplies furnished for its work, of all cars at the station except in trains, of the receipt, care, forwarding and delivery of baggage and freight, of the sale of tickets, collection of station revenues, remittance or deposit of money received for the Company, of such disbursements thereof as may be properly authorized, of all station employees while at the station, so far as relates to their conduct or to the station work. They will also have charge of such other matters as may arise in connection with the station management or may be assigned to them by proper authority. The Company's business affairs will not be divulged except to the proper officers of the Company.

RULE 750 (2)

They will make frequent inspections of the station premises and see that all parts thereof are in safe and proper condition for the uses to which they are devoted. Any defects they cannot remedy will be promptly reported to the Superintendent.

RULE 750 (3)

They will familiarize themselves with the boundaries of the Company's property at their stations, and not permit any encroachment thereon. Unless provided for by lease, they will not allow any commodities to be placed on grounds or right of way at their stations for the purpose of storage without written permission from the Superintendent, and then only after release on prescribed form has been executed by the owner."

It is clear from the record that the Carrier should have been aware of Claimant's unauthorized use of its premises without benefit of lease long before the instant dispute. Testimony concerning the installation of a telephone at the Claimant's mobile home indicates constructive notice to the Carrier that the mobile home had been parked on its property by the Claimant on a permanent basis. However, the Claimant was the agent in charge of the

station and the official responsible for authorizing and disbursing Carrier funds for services rendered such as the periodic payment of electrical bills. Claimant in his official capacity as Agent-Telegrapher knowingly misused his position of trust when he converted Carrier's funds to his own use by the payment of electrical bills which covered service primarily for his own personal benefit and enjoyment. The initial misappropriation and conversion of the Carrier's funds was amplified in July 1964 after the installation of a deep freeze refrigerator unit on the Carrier's property without authority. The operation of said deep freeze unit was charged to the Carrier for approximately seven months by Claimant prior to his dismissal from service. Thus we find that the Carrier's disciplinary action resulted from an accumulation of Rule infractions by Claimant over the twenty month period following the unauthorized use of the Carrier's premises when Claimant parked his mobile home on the Carrier's property without benefit of lease. The notice of charges filed by Carrier with Claimant followed a thorough investigation and was promptly delivered to him on completion of said investigation. The Carrier is not barred by laches from asserting its rights because of failure to act at an earlier date. There was no undue delay or neglect following the discovery of Claimant's varied and improper activities.

We find no basis to support Claimant's contention that the hearing was not fair and impartial. The charges against Claimant were not denied and the only probative testimony advanced on behalf of Claimant was concerned with his years of service without a previous blemish on his record. Such testimony is proffered in mitigation and we have duly considered Claimant's previous record in view of the ultimate penalty imposed by the Carrier.

We find that Claimant had a full, fair and impartial trial and that there is nothing in the record to substantiate a charge or sustain a finding of arbitrary or capricious action on the part of the Carrier.

This Division by a well established line of awards will not overturn a decision of the Carrier in the absence of a finding that the discipline imposed was unfair, capricious or arbitrary. (Award No. 10900). We find no such error or abuse of discretion here. The claim will be denied.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1966.

Keenan Printing Co., Chicago, Ill.

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