



Award No. 14376
Docket No. CL-15296

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5669) that:

(a) The discipline imposed by the Carrier against Clerical employe Mr. E. E. Morrison, Inman Yards, Atlanta, Georgia, for his alleged responsibility in having made a typographical error in the placing of information on list of Class Track No. 7, October 9, 1963, was unreasonable and a violation of our Agreement rules.

(b) Mr. Morrison shall be restored to the service of the Carrier with seniority and all other rights unimpaired.

(c) Mr. Morrison shall be compensated one day's pay each day, five days a week, beginning October 9, 1963, and continuing until he is restored to service.

OPINION OF BOARD: On October 10, 1963 Claimant was dismissed from service as a yard clerk at Carrier's Inman Yard in Atlanta for making two typographical errors on a hump switch list. Claimant listed car GACX-49594 when it should have been GACX-40504, and listed car NYC-72944 when it should have been NYC-72946. The typographical errors were noticed by a supervisor and corrected before any problems arose as a consequence thereof.

After dismissal, Claimant requested an investigation. During the investigation he admitted making the mistakes as charged.

Claimant, on the basis of leniency, was restored to service with seniority rights unimpaired effective December 24, 1964.

The only question to be decided in this case is whether the offense warranted the discipline imposed.

It is noted at this point that Claimant at the time had been in Carrier's employ some 43 years, and had a record of ten previous violations, all of which could be generally categorized as minor.

As set forth in the companion case prior to this (CL-15295), the prevailing view of this Board relative to the question of excessive discipline may be summarized as follows: The Board will not substitute its judgment for that of the Carrier unless (1) The penalty imposed is, on its face, unequivocally shocking and outrageous, or (2) it is shown, in all other cases where the harshness or severity of the penalty might be questioned, that the Carrier was arbitrary, capricious, acted in bad faith, or otherwise abused its discretion in assessing the penalty. In either case, the Board is empowered to exercise its discretion in mitigating the discipline imposed in order to conform the punishment to the offense committed. Award 11170.

We find that the punishment imposed by Carrier was on its face excessive and unreasonable. Two corrected typographical errors without damaging consequence do not provide the basis for suspension without pay for over 14 months. Moreover, considering the records in this and the companion cases, it is clear that Carrier's local officers embarked on a program of deterrent action in an attempt to improve efficiency which resulted in arbitrary punishment with respect to the individual Claimant.

Taking into account Claimant's prior record, we find that a 60-day suspension without pay was sufficient penalty.

Pursuant to Award 13986, Carrier is entitled to deduct wages that the Claimant earned or could have earned with reasonable diligence.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated.

AWARD

Claim sustained consistent with this Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1966.

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