Award No. 15573
Docket No. CL-16279

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 5992) that:

1. Carrier's action in dismissing Mail Foreman R. M. Malone from service without proving its charges of failing to comply with instructions from his supervisor and for leaving his assigned position without proper authority was unjust, unreasonable, arbitrary and capricious.

2. Carrier shall now be required to clear the record of the charges made against employe R. M. Malone and reinstate him on Mail Foreman Position at St. Paul, Minnesota with all rights unimpaired and compensate him for all loss sustained from March 12, 1965 until he is returned to service.

OPINION OF BOARD: This is a discipline case. Claimant, a Mail Foreman with thirty-six years' seniority, was discharged from the service of Carrier on March 12, 1965 for failure to comply with instructions from his Supervising Officer and for leaving his assigned position of Mail Foreman without proper authority. Petitioner contends that Carrier violated the applicable rules of the Agreement between the parties by failing to prove through competent evidence that Claimant had either disregarded instructions of his Supervising Officer or left his assignment without proper authority as specified in the charges and notice of dismissal. Moreover, Petitioner suggests that the investigation was improper in that the Carrier's Trainmaster, who preferred the charges, also conducted the investigation and rendered the decision.

Carrier's primary defense is that Claimant's discharge resulted from a pattern of conduct culminating in the specific charges considered during the investigation on the property and that the discipline assessed was fully warranted under the circumstances. Carrier also avers that Claimant was accorded a fair and impartial hearing at which he appeared and was duly represented in accordance with the provisions of Rule 22 of the Agreement.

The Board has reviewed the record, including the transcript of the investigation proceedings, and finds no breach of Claimant's procedural rights. There is nothing in the rules specifying who shall conduct hearings, and there is no evidence of bias or prejudice on the part of the hearing officer.

As to the merits of the dispute, the record discloses that the Claimant was charged with four general categories of improper conduct; namely, reporting of unauthorized overtime, unauthorized absences from his Mail Foreman position, use of intoxicants, and failure to make mail and overtime reports. However, Carrier's notice of dismissal following an investigation cites only two specific grounds for dismissal, which are failure to comply with instructions from his Supervising Officer and leaving his assigned position of Mail Foreman without proper authority. Accordingly, we shall confine our consideration to the charges contained in Carrier's notice of dismissal, the stated grounds for disciplinary action.

Although the record supports Carrier's contention that Claimant left his assigned position as Mail Foreman without specific authorization from his supervisor on several occasions, it appears that Claimant had done so in the past without any previous warnings from his supervisor. Apparently written instructions were issued by the Supervisor to Mail Foremen on November 27, 1963, requiring them to contact him "whenever you are having difficulties or an emergency arises." However, Claimant denies receiving any instructions pertaining to absences from his Mail Foreman position. Moreover, he allegedly assigned his duties to other qualified employes on such occasions.

It is evident from the record that Claimant was aware of certain instructions pertaining to check out procedures and the submission of reports, which he disregarded on several occasions. However, it is also apparent that Claimant was allowed broad latitude in the performance of his duties as a Mail Foreman over the years, and that Carrier had failed to communicate its dissatisfaction with Claimant's conduct to him until the sequence of events immediately preceding the instant dispute.

Although Carrier properly found that Claimant's pattern of conduct warranted disciplinary action, we find the extreme penalty of discharge to be unduly harsh and excessive under the peculiar circumstances involved in this case. On the basis of all the evidence of record, a suspension of sixty (60) days would have been the maximum penalty justified. Therefore, Claimant will be restored to service as of May 12, 1965, with seniority rights unimpaired and the monetary loss suffered be paid less amounts earned in other employment.

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 Employes involved in this dispute are respectively Carrier and Employes 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 discipline assessed was too harsh and excessive.

AWARD

Claim sustained as modified by the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1967.

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