

Award No. 18551
Docket No. CL-18818

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
THE TEXAS & PACIFIC RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brother (GL 6827) that:

1. Carrier's action in the dismissal from service of Mr. A. B. Crabb, Jr., Clerk, Fort Worth, Texas, was unreasonable, arbitrary, capricious and unjust.
2. Mr. A. B. Crabb, Jr., have his record cleared of any and all charges that may have been placed against him because of this case.
3. Mr. A. B. Crabb, Jr. be compensated for any loss in service he may have sustained from date of removal from service until he is restored to service of the Carrier.

OPINION OF BOARD: This is a discipline case. Claimant, A. B. Crabb, Jr., has been continuously employed by Carrier for a period of 27 years as Clerk, Lancaster Yard, Fort Worth, Texas. He was notified in a letter of July 21, 1969 to report for a formal investigation on July 23 to develop facts concerning alleged misconduct and abusive manner toward a female employee of a Messenger Service firm. As a result of this investigation, Claimant was dismissed from service July 26, 1969. However, in conference, Carrier agreed to reinstate him on a leniency basis, effective September 24, 1969, without pay for time lost. Thus, the present claim was filed for payment of wages lost for the period July 26 to September 24, 1969, along with a claim that any notations on his record be removed.

The scope of our review in discipline is limited. We do not weigh the evidence to ascertain if our decision would be the same as that reached by the Carrier. The policy of this Board is to examine the record to determine whether the decision of the Carrier is supported by substantive evidence.

We shall now examine the record in accordance with this well established policy.

At the hearing, the only witness called by Carrier was the complaining lady, the employee of the Messenger Service firm. Her accusations of Claimant's misconduct and abusive manner were uncorroborated by other witnesses.

Claimant denied these accusations. Carrier concluded that Claimant was guilty as charged solely on the testimony of this one witness.

We are forced to conclude that the dismissal of Claimant was not supported by substantive evidence. The dismissal was based on testimony totally uncorroborated. The decision stemmed from nothing more than surmise and speculation, and cannot be allowed to stand.

Therefore, it is the order of this Board that Claimant be compensated for all wages lost limited to the period July 26 to September 24, 1969, save any amount earned elsewhere during this period, and that his record shall be cleared of the charges against him.

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 violated.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May, 1971.