

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19559  
Docket Number CL-19801

I. M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Employees

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7163)  
that:

1. Carrier abused sound discretion and acted in an arbitrary manner when it assessed the supreme penalty of dismissal of Mr. G. R. Brogan, Jr., Key punch Operator, Data Processing - Computer Services Department, Roanoke, Virginia, after hearing held on January 27, 1971.

2. The discipline rendered was too severe; as the purpose of discipline rendered is not primarily punitive, but corrective.

3. Mr. G. R. Brogan, Jr., shall be restored to service with seniority and all other rights unimpaired.

4. Mr. G. R. Brogan, Jr., shall be compensated for all wage loss sustained by him until he is restored to service.

OPINION OF BOARD: Claimant was employed as a key punch operator at Carrier's Data Processing Center at Roanoke, Virginia. He was first employed on August 2, 1965. He regularly worked from 8 A.M. to 5 P.M.

On January 20, 1971, while on over-time, Claimant removed eight Virginia State Withholding Income Tax Reports (VA-2 forms) from the boxes containing these reports in one of the data processing departments. The forms removed contained the copies which the Carrier was required to submit to the State Department of Taxation. The eight forms were those for himself, his father, brother and five other employees who were working with Claimant at the time. Between 7:30 and 8 A.M. the following morning Claimant contacted his union representative and asked for assistance in returning the forms. There followed several conversations with members of supervision; all the forms were voluntarily returned on January 21st and 22nd. The forms were allegedly removed as "a favor" to the various employees in order to enable them to get an early start in filing their income tax reports.

Following a formal investigation, properly conducted, Claimant was dismissed from service for "...your responsibility in connection with your unauthorized and improper removal of Company records....". The sole issue in this case is whether the penalty of dismissal was justified.

The record contains evidence of one prior discipline assessed against claimant; he had received a ten-day record suspension on December 5, 1968 for submitting a falsified doctor's certificate to excuse an absence from duty on October 25, 1968. It is well established that a Carrier may properly consider an employee's past record to determine the measure of discipline to be assessed (see Awards 13684, 16315, 16268 and many others).

On numerous occasions this Board has said that we are aware of the fact that dismissal from service is the most drastic punishment which can be imposed and we have been quick to modify such discipline whenever there are mitigating circumstances or the evidence clearly shows an abuse of discretion by a carrier. (Award 12985) We continue to hold that, generally, the imposition of discipline is a management prerogative. However, we also have said (Award 18016):

"...the severity of punishment must be reasonably related to the gravity of the offense. We have repeatedly observed that misdemeanors do not require life sentences."

While recognizing Carrier's concern in the instant infraction, we find that the penalty of dismissal is improper, arbitrary and harsh, in the light of the entire record. We therefore direct that the Claimant be restored to service with seniority and other rights unimpaired and that his record indicate that he was given a six-months suspension without pay, for his unauthorized and improper removal of company records on January 20, 1971. He shall also be compensated for all lost wages in accordance with Rule 27(d) less six-months unpaid suspension.

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

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That the discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: E. A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1973.