

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19735  
Docket Number CL-19945

C. Robert Rosdley, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7201)  
that:

(1) Carrier violated the Clerks' Agreement when it dismissed Mr. F. W. Clegg on June 15, 1971, for alleged violation of the rules and failure to properly perform his duties as Claim Clerk, Memphis, Tennessee.

(2) That Carrier now be required to reinstate Mr. F. W. Clegg with all his rights, including seniority and vacation rights, unimpaired and he be compensated for all time lost from June 15, 1971.

(3) The Carrier shall be required to pay an the total **amount** claimed in Item 2 above 1% (one percent) per month **as** interest commencing June 15, 1971 and compounded monthly until this claim is paid in full.

OPINION OF BOARD: Claimant, employed **as** Claim Clerk, was charged with having violated his trust as an agent of the Carrier when he **consum-**  
**mated** an allegedly fraudulent transaction in the marketing of **a** damaged shipment of oil; and that he gave false reasons for his desire to be off duty **on** the day of the transection.

Claimant alleged that he was not given a fair and impartial hearing, that the decision of the Carrier **was** not sustained by the evidence at the hearing, end that the penalty was unreasonable in light of the facts and circumstances in this **case.**

A thorough review of the record clearly demonstrates that the investigation **was** proper and that the hearing was conducted in s fair and impartial manner. Further, the record contains ample probative evidence to support the finding that the actions of the Claimant were substantially violative of his duties and responsibilities **as an** employee in that he **consummated** the subject transaction contrary to his authority and in violation to the Carrier's rules and regulations. Additionally, Claimant's statements regarding his reasons for being off duty on the day of the transaction are not supported by the facts **as** set forth in the record.

Since the record contains substantial evidence that supports the Carrier's decision, that decision cannot properly be disturbed by this Board for the Board reviews discipline cases in an appellate capacity and does not weigh conflicting evidence or attempt to pass on the **credibility** of witnesses.

In Award No. 16074 (**Perelson**) we said:

"Numerous prior **awards** of this Board set forth our function in discipline cases. **\*\*\*\*Our** function is but to pass upon the question whether, without weighing it, there is substantial evidence in the record to sustain a finding of guilty. Once that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We **are** not warranted in disturbing the penalty imposed unless we **can** say that it clearly appears from the record that the action of the Carrier with respect thereto **was** so unjust, unreasonable, **or** arbitrary as to constitute **an** abuse of discretion."

This Board has also held on numerous occasions that dismissal from the service of a Carrier for a dishonest act is not an excessive application **or an** abuse of discretion.

In view of the foregoing we will deny the claim.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1973.