NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19798
THIRD DIVISION Docket Number CL-20051

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Washington Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-7214) that:

(a) The Carrier violated the Rules Agreement, effective August 1, 1958, particularly Rule 24, when it assessed discipline of dismissal on George E. Anderson, Ticket Seller, Washington Terminal Company, Washington, D.C.

(b) Claimant G. E. Anderson's record be cleared of the charges brought against him on October 11, 1971.

(c) Claimant G. E. Anderson be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained during the period out of service, plus interest at 6% per annum compounded daily.

OPINION OF BOARD: This matter deals with the termination from service of an employee with twenty-nine years of service.

Claimant was a Ticket Seller at the Washington Terminal. On October 11, 1971, he was charged with three separate incidents of misconduct, all of which stated a general rudeness, discourtesy and indifference to patrons. The alleged incidents occurred on September 18, September 19, and October 9, 1971, at the Washington Terminal.

The Board is of the view that the Carrier certainly sustained its allegations concerning Charges 1 and 3. It has long been held by the National Railroad Adjustment Board that said Board shall not disturb a finding of cause for disciplinary action, if substantive evidence of record exists to support such a finding (absent, of course, some procedural defect which requires a contrary determination). While Claimant attempted to rationalize and/or explain his behavior on September 18, 1971 and October 9, 1971, this Board is of the view that there is substantial evidence of record to demonstrate that on September 18, 1971 Claimant wrongfully refused to make a Metroliner reservation for a patron, and did misinform him that such reservation could only be made by telephone; and that on October 9, Claimant was rude, discourteous and indifferent to a patron by refusing to offer proper (and expected) timetable assistance and by criticizing said patron for not having stated, in advance, the method of ticket payment.

There is some question concerning the allegations of Charge #2. As a procedural matter, it would appear that a Carrier must give an accused employee a hearing upon a specific charge against him or her. Concerning the events of September 19, 1971. Claimant is accused of rudeness, discourtesy and indifference. It is charged that when he was asked three (3) times by a patron for a train timetable he responded, without looking at the patron, by merely motioning him to a nearby timetable rack, which rack was empty of timetables. While the Carrier's evidence did show a general rudeness, an error in the sale of a ticket, etc., the evidence did not appear to support the specific charge. A search of the transcript of the investigation and the accompanying documents fail to show any evidence that Claimant motioned the patron to an empty rack. In point of fact. the evidence tended to show that the patron already had a timetable but was undergoing difficulty in understanding same. While this might raise the question, in some cases, as to whether the charges were sufficient to place the Claimant on notice of the alleged offense against which he had to defend, for reasons set forth below, the Board is of the view that it is unnecessary to decide that question in this case. Claimant was guilty of the offenses charged in allegations 1 and 3. It remains only to be determined if his actions under those charges, and other pertinent matters of record, are sufficient to warrant permanent dismissal from the service of the Carrier.

This Board must, in a case of this type, assure that the degree of discipline imposed was reasonably related to the seriousness of the proven offense, and that a disciplinary determination is not unreasonable, arbitrary, capricious, etc.

Claimant presented an alternate plea of leniency, without prejudice to the merits, and not an admission against interest. While years of service alone may not constitute a permanent discharge as arbitrary and/or capricious, it is obviously a matter which is considered in that regard. Weighing all factors, the Board feels that the penalty of permanent dismissal was reasonably related to the seriousness of the offense and is not arbitrary or capricious.

Claimant's job brought him into constant contact with the traveling public. The Carrier (and the public) had a right to expect a pleasant and cooperative attitude toward patrons. Claimant's actions were quite to the contrary. While an isolated incident of unpleasant attitude might be tolerated or overlooked, Claimant demonstrated a general lack of concern. The Carrier produced records showing past conduct - not to establish proof of the allegations - but to be considered as bearing upon the ultimate penalty. It appears that Claimant was reprimanded in 1969, and that the Carrier received eight (8) letters of complaint against Claimant. Of significance, Claimant was counseled on eight (8) or ten (10) and "possibly more" occasions concerning written and verbal complaints received from passengers who stated that Claimant was "rude, arrogant, discourteous, contemptible in his dealings with them."

It is indeed unfortunate that Claimant demonstrated this type of attitude toward the patrons with whom he dealt. The record sheds no light on the reasons which prompted this type of reaction, although Claimant offered some gratuitous comments dealing with dissatisfaction with working conditions and personal animosities. In any event, for whatever the reason, Claimant has allowed something to interfere with his job performance which requires a constant exposure to the public. Upon the entire record, the penalty of permanent discharge was not excessive.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1972.