

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20351
Docket Number CL-20545

David P. Twomey, Referee

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

PARTIES TO DISPUTE: (

(Burlington **Northern** Inc.

STATEMENT OF CLAIM: Claim of the Burlington Northern System Board of Adjustment (**GL-7481**) that the Carrier:

1. Violated the rules of the **March** 3, 1970 Rules Agreement by discharging Mr. **Mark E. Lammiman, Accountant, Customer Account-**ing Canter, Seattle, Washington, from the service of the Railway **Com-**pany, effective December 7, 1972.

2. Shall **now** reinstate Mr. Mark E. **Lammiman** to the service of the Railway Company with all rights unimpaired, clearing his record, compensating him for all wages lost plus six percent interest compounded daily and recovery of any loss suffered as a result of the termination of his coverage under Group Policy GA-23000 in accordance with its terms.

OPINION OF BOARD: Claimant was dismissed from **service**, after two separate investigations were conducted by the Carrier on November 21, 1972. The first investigation dealt with the alleged use by **Claimant**, on June 2, 1972, of Carrier's postage for a personal piece of mail addressed to another Carrier employee at another Carrier **business** address. The second investigation involved alleged abusive **and** insubordinate conduct **on** the part of the **Claim-**ant **on** September 22, 1972.

Concerning the first investigation, the Organization contends that the Claimant was formally charged under procedural Rule **56(A)** on July 14, 1972. Rule 56(A) states in pertinent **part:**

"... The **investigation** shall be **held within** seven (7) calendar days of the date when charged with the offense or held **from service....**"

The Organization argues that the investigation should have been held within **the** prescribed seven days as provided for in this rule; **and** having failed to do so, **the** Carrier was precluded **from** holding an investigation on the **same** charge on the November 21, 1972 date.

The record **shows** that an attempt by the Carrier to **serve** proper notice on the Claimant was unsuccessful on the July 14, 1972 date, because the Claimant **was** not at his residence and was on a 90 day leave of absence. The Carrier's Service of Notice on the Claimant on November 16, 1972, **conforms to** the requirements of Rule 56(A). The investigation of November 21, 1972 took place **within** the seven day limit of Rule 56(A). Rule **56 contains** no **limitation on** the Carrier concerning a time restriction under which the Carrier **must** call for an investigation after receiving knowledge of an alleged violation **of** rules.

Concerning the substantive charges of the first **investigation**, that of one incident of use of Carrier postage for personal use, it is abundantly clear that Carrier has supported its finding of Claimant's guilt with substantial evidence.

Concerning the second investigation, dealing with alleged use of abusive language and insubordination, the Organization contends that the investigation **was** improper because the **charges** made in the notice of investigation **were** known to the Carrier on September 22, 1972; and if an investigation was to be held, **it** should have been held seven days from the date Claimant returned to **work** after his leave of absence. As previously **stated**, Rule 56(A) places no such time restriction on the Carrier to initiate an investigation.

There can be no doubt but that Carrier, in regard to the **matters** in the second **investigation**, **has** supported its charges with clear and substantial evidence. **However, under** all the unique facts and circumstances of this **entire** record, including the transcripts of both investigations, the Board is of the view that a permanent dismissal from **Carrier's service** **was** not warranted in this case and is excessive.

Based on the entire record **the Board finds:**

- (1) That discipline was warranted; and
- (2) That permanent dismissal was excessive.

The Board awards that the Claimant shall be restored to Carrier's Service with seniority and other rights unimpaired, but without pay for lost time. **There** is no agreement support for Claimant's **claim** for interest or recovery for loss suffered by **termination** of his Group Policy CA23000 coverage.

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 Carriers 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 **discipline** imposed was excessive.

A W A'R D

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauline
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of July, 1974.