

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20673  
Docket Number CL-20784

William M. Edgett, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station Employees  
{ Jacksonville Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7572) that:

(1) The Carrier violated the agreement on or about May 22, 1973 when It dismissed from its service Sinclair Wilcox.

(2) The Carrier shall now reinstate claimant to the service and compensate him for all wage losslessary Compensation earned in other employment.

OPINION OF BOARD: The record shows that claimant was employed in Carrier's Baggage and Mail Department on March 26, 1957. On April 18, 1973, he was notified by Carrier's General Baggage and Mail Agent:

"You are hereby instructed to be in my office at 1:00 p.m. Monday, April 23, 1973, for formal investigation wherein you are charged with Incompetence; upon the allegations that, (1) you were absent from your duties from 11:45 a.m. to 12:25 p.m. on April 11, 1973; (2) you misloaded 15 sacks of West Palm Beach first class mail and 5 sacks of Ft. Lauderdale mail in the 6:15 p.m. West Palm Beach truck on April 11, 1973; (3) you had a concealed weapon (pistol) in your possession while on the property of the Jacksonville Terminal Company on April 16, 1973 in violation of ruler,, and the instructions of Baggage and Mail General Foreman B. H. Lawson, Jr.

"If the facts developed in this investigation should sustain the charge against you, you will be subject to discipline."

The investigation was conducted on April 23, 1973, as scheduled. Claimant was present at the investigation, acted as his own representative and was assisted by the Assistant General Chairman. A transcript of the investigation has been made part of the record before the Board.

A review of the entire record, including the transcript of the investigation, shows that none of Claimant's substantive procedural rights were violated. The objection raised in the investigation that the

investigation could not be fair and impartial **because** the same officer who preferred the charge **was** the conducting officer **is** without validity. The official conducting the investigation did **not** offer **testimony**. See **Awards 8179, 9322, 10355, 14573, 16268** and others. The record **is** convincing that the hearing **was** conducted without bias. The **claimant** and his representative were given the opportunity to and did engage in **extensive questioning of witnesses**.

There was substantial evidence in the investigation to show that claimant was absent from his duties for about **40 minutes** on April **11, 1973**; that he failed to properly load mail that he **was** assigned to handle on April **11, 1973**; that he had a pistol on Carrier's property on April **11, 1973**; and that he had previously been cautioned that it **was** **against** the Carrier's rules to bring weapons on the property. Claimant denied all the charges, and while he alleged there **was** some conspiracy and tampering with the mail, there **was** no evidence to support such allegation.

It **is** well established by decisions of **this Board** that the **Board** will not attempt to **weigh** the evidence adduced at investigation nor resolve conflicts therein. We **will** not disturb Carrier's **decision** where it is **supported** by **substantive** evidence and not arbitrary or capricious. While the Charge of being absent from his duties about 40 minutes and the **misloading** of the mail may not in themselves justify **dismissal**, these along with the **serious** charge of having a concealed weapon in his possession while on the property of the Carrier in violation of rules, after having previously been cautioned, justified the Carrier's action. The fact that claimant may have had a permit to carry a concealed weapon as a detective in the City of Jacksonville, did not give him a license to violate Carrier's rule while on the Carrier's property.

The claim will be **denied** in its entirety.

**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: *A.W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1975.