

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20765
Docket Number CL-20732

Irwin M. **Lieberman**, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, **Express** and Station **Employees**
PARTIES TO DISPUTE: (
(The **Atchison**, Topeka and Santa Fe Railway **Company**
(- Coast Lines -

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7560) that:

(a) Carrier violated the rules of the current Clerks' **Agreement** at Richmond, California, **commencing** on or about **June 10, 1971**, **when** it wrongfully discharged Mr. J.H. Cleveland from service; and,

(b) Mr. J.H. Cleveland shall now be reinstated and **compensated** for all monetary loss suffered **commencing** June 10, 1971, and continuing until such **time** as he is reinstated because of such violation of **Agreement** rules.

(c) The Carrier shall be required to pay **6%** interest compounded daily on all wages wrongfully withheld from Mr. **Cleveland** **commencing** June 10, 1971.

OPINION OF BOARD: **Claimant** was discharged for insubordination **on** June 10, 1971 and **reinstated on December 21, 1971** without **pay**. The Claim herein involves essentially a **Claim** for Lost pay **due** to the alleged improper discharge.

Petitioner argues that the investigation in this dispute was improper, denying **Claimant** due process, on a **number** of grounds. **First** it is contended that the **determination** of guilt was made by a Superintendent "...before the transcript of testimony at the hearing was completed and without the Hearing Officer making any **recommendation** or findings as to the credibility of the **witnesses....**" This **contention** must be rejected **because** not only does the record fail to support the **allegation** but **more** specifically because this issue was not raised by **Petitioner** during the handling on the property and thus is not properly before us (see Awards 14641, 18656, 19101, 19746 and many others). It is argued further that Carrier refused to allow a fellow **employee** to **appear** as a witness in behalf of **Claimant**; the record does not support this contention. The Organization submitted signed statements from several **employees**, allegedly relevant to the dispute, **in a conference** with Carrier **some six months after the close of the investigation**. Carrier **argues** that such evidence cannot be considered by the Board, and that position is **well** taken. We have **repeatedly** held that evidence submitted **after the conclusion** of an investigation is inadmissible (e.g. Awards 15574 and 19808).

Petitioner argues further that **Claimant** was **denied** due process because the determination of guilt was **made** less than twenty **four** hours from the close of the hearing and prior to the typing of the **transcript** of the investigation. It **must** be noted that there is no Agreement support for this position since the rules do not provide for any **minimum** time period which must expire before a decision is rendered; usually expeditious handling is preferred by Petitioners. Additionally, there is no requirement that the transcript **be** typed prior to the decision being rendered. An examination of the transcript does not support Petitioner's additional charges that Claimant's rights were violated in other respects.

The **investigation** in this dispute contains substantial evidence of probative value, **even** though denied by Claimant, to support Carrier's conclusion that there was insubordinate **behaviour**. Petitioner **argues** that the discipline imposed was disproportionate to the degree of alleged insubordination. This Board over the years has consistently found that insubordination justifies dismissal (see for example Awards 16948 and 16074). In this dispute, in view of Claimant's reinstatement, **we** certainly do not view the penalty as arbitrary or **inappropriate**.

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 Adjust-ment 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:


Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1975.