

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20918
Docket Number CL-20846

Louis Norris, Referee

(Brotherhood of Railway, Airline **and** Steamship
(Clerks, Freight Handlers, Express and Station
(**Employees**
PARTIES TO DISPUTE: (Robert W. **Blanchette**, Richard C. Bond, and
(**John H. McArthur**, Trustees of the Property of
(**Penn** Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of **the** System Committee of the Brotherhood
(GL-7575) that:

(a) **The** Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed **discipline** of dismissal on K. J. **Strattman**, Clerk-Timekeeper at Selkirk Yard, Albany, N.Y., in the Carrier's Northeast Region.

(b) Claimant K. J. **Strattman's** record be cleared of the charges brought against him on February 24, 1973.

(c) Claimant K. 3. **Strattman** be restored to service with seniority **and all** other rights unimpaired, and be compensated for **wage** loss sustained during the period out of service.

OPINION OF BOARD: As of **February**, 1973, Claimant was the regular Timekeeper at Selkirk Yard, with over 32 years of service with Carrier. At that time, he had been employed as **Time-keeper** for the past LO years. On March 30, 1973, he was **dismissed** from service pursuant to formal investigation held on **March 22**, 1973; the charge was falsification of his **time** records "**in order to illegally** obtain funds not **due**" for certain **specified** dates in February, 1973.

Petitioner contends that Claimant **was** not guilty of the charge, that he **was** not afforded a fair and impartial hearing. sad that the discipline imposed was unwarranted, particularly in view of Claimant's 32 years of service. The relief demanded is set **forth** in the Statement of Claim

Initially, Petitioner asserts that Claimant's dismissal **was** improper since it was based on **the** charge that ". . . as a result of said falsification, you **illegally** received a remuneration for service not rendered this Company."; whereas, the charge **proper** was for falsification "**in** order to illegally obtain funds not **due**".

Carrier counters **that** this issue represents "new matter" not raised on the property **and** therefore inadmissible et this stage of the appellate process.

We sustain Carrier's objection **on** the issue of "new matter", based on established principle **as** set forth in a host of precedents to that effect. See Awards **18122 (Dorsey)**, 18347 (Dugan), 18545 (**Devine**) and 19832 (Sickles), **among many** others. Additionally, we find no substantial difference between the Language in the charge **and** the Language in the dismissal Letter. If Claimant received remuneration "for service not rendered", then obviously he obtained "funds not due", particularly since, as Timekeeper, he prepared and approved his own time cards.

Nor does Award 16154 (Ives), cited by Petitioner, hold to the contrary. In that Award, the original charge was based on July dates; but the discipline imposed made no reference to July and related solely to "specified dates in August and September **1964**". Factually, that is a far cry from the confronting facts in the **instant** dispute.

On the issue of "fair and impartial hearing", we **have** carefully reviewed the transcript of the Investigation, **on** the basis of which we are **unable** to sustain Petitioner's objection. Claimant was afforded every opportunity to present his version of the facts, he **was** vigorously represented by the Organization with **ample** opportunity for cross-examination of adverse witnesses, **and** the entire hearing **was** conducted properly and fairly in accordance with the Rules **and** without any denial of Claimant's rights of due process.

On the merits, therefore, **and** based on our **analysis** of all the testimony and particularly the testimony and **admissions** of Claimant, we are compelled to the conclusion that Claimant **was prop-**
erly found guilty of the charge of falsifying his **own time** records "in order to illegally obtain funds not due". Stripped of **all** but the **basic** facts, the evidence is **amply** clear that Claimant came in early when he wanted to, left early when he wanted to, allegedly took time records **home** when he wanted to and without **any** authorization, and recorded his claimed straight time and overtime hours **as** he wanted to end **in such** amounts as he alone determined. Furthermore, as Timekeeper, he knew full well that solely on the basis of his signature on his time cards the Payroll Department would make payment for the time recorded by him on the dates in question.

In view of Claimant's 32 years of service **and** his specialized knowledge **and** experience gained in his LO years of service as Timekeeper, such flagrant violation of the Rules is well **nigh** incredible **and** bespeaks palpable fraud. Indeed, it was Claimant's responsibility as Timekeeper to scrutinize and reject, certainly to report,

similar claims and practices of other **employees**, if asserted. In view of these circumstances, the various "explanations" offered by Claimant cannot be given credence.

"The principle has been well established that we will not disturb Carrier's decision on guilt or the discipline imposed where it is supported by substantial probative evidence and Carrier has not acted arbitrarily, unreasonably or contrary to due process. See Awards 3149 (Carter), 9422 (Bernstein), LO429 (Rock), 13674 (Weston), 15566 (Lynch), 19216 (**Edgett**) and 20189 (Sickles), among many others." See Award 20868 (Norris).

Petitioner contends, however, that these **acts** and procedures of Claimant, on which the charge is based, were in fact pursued by him for a period of at Least six months, and this, it is asserted, constituted knowledge, acquiescence and condonation by Carrier. The record, however, speaks to the contrary for there is no such testimony or evidence before us.

"Conversely, it appears that such practice went undetected; but this is hardly sufficient to establish knowledge, approval or condonation by Carrier or justify its repetition". See Award 20865 (Norris), among others.

We take note of Petitioner's further contention that the Investigation Officer "did not render the decision on the investigation"; however, such contention is not borne out by the record. Carrier states that following the investigation the investigating officer reviewed the record, concluded that Claimant was guilty, that disciplinary action was warranted and communicated his findings to Mr. Dougherty, Assistant Superintendent. This is not disputed by Petitioner. However, in the follow-up decision rendered by Mr. Dougherty, he used the phrase "I hereby conclude . . ." On this basis, Petitioner contends that Mr. Dougherty rendered the decision, not the investigating officer. There is nothing in the record to support such contention.

Accordingly, Awards 17901, 13240, 17156 and 14267, cited by Petitioner, **are** not germane. Additionally, we are constrained to point out that there is no Rule in the Agreement that requires the Investigating Officer to render the decision, particularly where, as here, the basic facts are conceded in the testimony of Claimant. Moreover, the overwhelming weight of authority in prior Awards of this Board is contrary to the contention of Petitioner.

See Awards 9102 (Stone), 9819 (**McMahon**), 12001 (**Dolnick**) and 16347 (**Devine**), among many others.

We are aware of Claimant's record of 32 years of service with Carrier. Nevertheless, we **are** unable to conclude in the controlling circumstances of this case that Carrier's imposition of the discipline of dismissal was unwarranted, or that it was unreasonable, arbitrary or capricious.

"This Board has held on numerous occasions that dismissal from service for dishonest acts is not an excessive application of discipline or an abuse of discretion". See Award 16168 (**Perelson**).

See also Awards 8808 (Bailer), 11278 (Stark), 13674 (**Weston**), 16888 (Goodman), 17243 (**Yagoda**), 18708 (**Franden**), 20603 (**Lieberman**), 20663 (**Twomey**) and 20868 (Norris), among **many** others.

On the basis of the **record** and controlling authority, therefore, we are compelled to deny this 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.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT BOARD**
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1976.