

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21109**
Docket Number **CL-21235**

James C. **McBrearty**, Referee

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

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood, **GL-7906**, that:

(a) Carrier violated the **rules** of the current Clerks' Agreement at Los Angeles, California, on October 9, 1973, **when** it wrongfully discharged Ms. Jon L. **Bice** from **service**, and

(b) Mr. **Jon L. Bice** shall now be **reinstated** and **compensated** for all monetary loss suffered **commencing** October 9, 1973, and continuing until such **time** as he is reinstated, **as a result** 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. **Jon L. Bice** **commencing** October 9, 1973.

OPINION OF BOARD: Claimant began **service** with the Carrier **on** July 21, 1971, **as a Record File Clerk**.

On September 24, 1973, **Claimant** was **advised by** Carrier that a formal **investigation** was being called for October 1, 1973, to determine the facts and place his **responsibility**, if any, in connection with **falsification** of records to absent himself from his assignment, April 13, April 24, and May 17, 1973, in the possible violation of Rules 16, 17 and 18 of the General **Rules** for the Guidance of **Employees**.

As a result of the investigation that was held **on** October 1, 1973, Claimant was **removed from** service on October 9, 1973. Claimant **was** found by Carrier **to have** violated Rules 16, 17, and **18** of the **General Rules for** the Guidance of **Employees**, which read as follows:

16. **Employees** must obey instructions from the proper authority in matters pertaining to their respective branches of the **service**.

They must not withhold information, **or** fail to give all the facts, regarding irregularities, accidents, personal injuries or **rule violations**.

Employees must report for duty is required **and** those subject to call for **duty will be** at their usual calling place, or leave **information as to where** they may be located. They **must** not absent **themselves from** duty, exchange duties or substitute other persons in their places without proper authority.

17. **Employees** must not be careless of the safety of themselves or others, indifferent to duty, insubordinate, dishonest, **immoral**, quarrelsome, or vicious. They **must** conduct themselves in a **manner** that will **not bring** discredit on their fellow **employees** or subject the railroad to criticism and loss of good will.

18. Courteous deportment is required of all employer in their dealings with the public, their **subordinates**, and each other.

Employees must not enter into altercations, play practical jokes, scuffle, or wrestle on company property.

Employees must devote themselves exclusively to their duties during their tour of duty.

Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's nor to decide the **matter in accord** with **what** we might or might **not have done** had it been ours to determine, but to pass **upon** the question whether, without weighing it, there is substantial evidence to **sustain** a finding of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the **sound discretion** of the Carrier. We **are not** warranted in disturbing Carrier's **penalty unless** we can say it clearly appears **from** the record that the Carrier's action with **respect** thereto was discriminatory, unjust, unreasonable, **capricious** or arbitrary, so as to constitute an abuse of that discretion.

Turning then to the case at band, the **Board** notes that dishonesty in any **form** is a matter of serious **concern**, and often results in dismissal **from the** service of a Carrier.

The term "dishonesty" means misconduct that involves either money or property. It goes beyond misappropriation or theft in that it includes **any conduct** that tends to perpetuate a fraud **on** a carrier resulting in financial loss. A list of abuses in the category of dishonest **acts** would include taking or giving bribes, misusing carrier's records, forms, or procedures, tampering with vending machines, padding expenses reports, and using Carrier's funds for personal purpose*. Falsifying work records or information on job applications are **two** particularly troublesome and **common** acts of dishonesty.

Such dishonest acts as these, among others, have been established as providing just cause for discipline or discharge. The burden of proof rests with the Carrier, as always, **and** the punishment must be **timely** and befit the **employee's** work record. Because a charge of dishonesty reflects upon a person's character and standing in society at large, the evidence presented by **the charging party**, the Carrier, **must** be fully persuasive, i.e., truly substantial and not **flimsy**.

This Board appears **to** agree generally that some discipline up to and including discharge is warranted when an **employee** is **proved** to have falsified time or production records, employment applications, or other Carrier **documents and** forms, as well as obtaining permission to be off through misrepresentation. **However**, it **must** be shown that the act was a **deliberate** one with intent to defraud, rather than a **mere** oversight or lapse of **memory**.

Looking **at the** record as a whole, the Board **finds** there **is** **substantial** evidence to show that Claimant obtained permission to be off through **misrepresentation**, thereby not properly protecting his job assignment, and subjecting himself to discipline. Any **unauthorized** absence **from** duty during assigned hours is a very serious offense and frequently results in dismissal from the service.

The **charge** of Claimant that Carrier's discipline **was** harsh and **excessive** is not borne out by the facts presented in the record. Carrier invested considerable **time** and expense to give Claimant three (3) complete **medical** examinations to see if there were any medical **problems which** would explain Claimant's excessive absenteeism of 774 days in one **13-month** period. In all of these examinations nothing medically wrong was **found** to explain Claimant's excessive absenteeism.

Moreover, after Carrier reviewed Claimant's past attendance record with **him** on August 24, 1973, Claimant was absent all or part of **nine** (9) days between August 27 and September 4, 1973.

The evidence is sufficiently substantial to support the charges that **Claimant** falsified records by stating that he was off sick, **when, in** fact, he was not on at least three occasions. We cannot say that the Carrier was **in** any way arbitrary, capricious, or lacking **in** good faith. Carrier considered the past record of Claimant and properly considered it only in measuring and determining the penalty to be made. It was **not** used in an attempt to strengthen Carrier's case on the charges which are the subject of this opinion. **In deference** to Claimant's prior record, and the **evidence** presented at the hearing, Carrier was justified in dismissing the Claimant. We will accordingly deny the claim.

Award Number 21109
Docket Number CL-21235

Page 4

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 29th day of June 1976.