

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21795
Docket Number CL-21486

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8013) that:

1. Carrier violated the Clerks' Rules Agreement, in particular Rule 18, **when** it suspended Mr. O. L. Guth from its service for a period of sixty days beginning August 6, 1974, (Carries File 205-4936)

2. Carrier's action was arbitrary, harsh and an abuse of discretion.

3. Carrier shall **now** be required to compensate Mr. O. L. Guth for all losses sustained; such losses to include all wages at the rate of \$43.57 per day, five days per week, and any premium payments he was required to make to the **Missouri Pacific Employees'** Hospital Association, and premiums paid in connection with Travelers Group Policy Contract No. GA-23000. Carrier shall also be required to pay a compound interest rate of one percent per month beginning with the sixtieth day after the initial date of claim.

OPINION OF BOARD: Claimant herein was given a sixty-day suspension following being removed **from** service and subject to **investigation**. The investigative hearing was over an eight-day period and resulted in a voluminous record. The charges and countercharges surrounding this disciplinary dispute are legion. We find it useful to deal only with the major **thrust** of the dispute.

Claimant was charged with eight major infractions together with 49 **subcharges**. Each subcharge **dealt** with specifics. **It must** be noted that Claimant was the Division Chairman of the Organization involved herein and had some thirty-two years of service with **Carrier**.) Following the hearing, Claimant was found guilty of the following:

- "1. that you failed to **comply** with instructions to discontinue conducting union and personal business during assigned office hours.

- "2. that you failed to generally perform your assigned duties in a satisfactory manner and
3. that you issued instructions to other **employees** not under your jurisdiction which were contrary to instructions issued by **such employees'** supervisors as developed in investigation conducted during the period Sept. 4 **thru** Sept. 13, 1974."

(A study of the transcript reveals that there were in fact fifty-two items describing alleged infractions by Claimant] On a number of these items there was no testimony to support the charges; on others, the hearing officer dismissed the charges as being without foundation; others involved incidents in which there were conflicting statements made. (It is quite clear that many of the incidents should have been handled at the time they **arose, by** Claimant's superior in discussions with Claimant, rather than being "stored up" for a full-fledged disciplinary proceeding. In fact, the shotgun approach used in this dispute would lead a reasonable man to conclude that Carrier had determined to discipline Claimant and used the scatter shot technique hoping that some of the charges could be substantiated. Nevertheless, the investigation produced sufficient evidence to support Carrier's findings of guilt in two areas: **Claimant** apparently failed to properly discharge some of his duties; additionally, Claimant used Carrier's telephone, working time and Carrier's other business equipment for his personal affairs. For these infractions it is clear that some discipline was appropriate. In view of Claimant's long, discipline-free record, we view the imposition of a sixty-day suspension as being arbitrary and excessive for the particular offenses noted above. We view a twenty actual day suspension as being appropriate in this **instance.** Accordingly, Claimant shall be made whole for forty days, in conformity with **Rule 18 (h)**; no payments not specified in the Agreement and no interest will be paid. 7

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

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That the discipline imposed was excessive.

A W A R D

Claim sustained in part, as indicated in the Opinion.

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

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1977.