

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22658
Docket Number CL-22769

Paul C. carter, 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-8699) that:

(a) Carrier violated the provisions of the current Clerk's Agreement at Argentine, Kansas, on November 14, 1977, when it removed Clerk M.L. Pecina from service as result of formal investigation held October 26, 1977, for violation of Rules 2, 14, 16 and 32 B, General Rules For The Guidance of Employees, 1975, on July 11, 1977, for improperly placing D. L. Pecina in Firemen's Freight Pool Turn 38 while D. L. Pecina was observing rest days on Hostler Position 833.

(b) M. L. Pecina shall now be returned to service effective November 14, 1977, and shall now be allowed an additional eight (8) hours at the current rate of Crew Clerk Position 6067 for November 15, 1977, and each day forward from November 15, 1977, Monday through Friday (40 hours per week).

(c) M. L. Pecina shall now be allowed any overtime compensation he would be entitled to under the provisions of the Clerk's Agreement from November 14, 1977, forward.

(d) In addition to above monies claimed, M. L. Pecina shall now receive ten per cent (10%) interest on monies claimed, such interest to be compounded on each and every pay day.

OPINION OF BOARD: The record in this case, which is rather voluminous, shows that the claimant, with a seniority date of September 15, 1951, was regularly assigned to Crew Clerk Position No. 6067 in the Carrier's Station Department at Argentine, Kansas, with assigned hours 7:00 A.M., to 3:00 P.M., Monday through Friday, rest days of Saturday and Sunday.

As Crew Clerk, one of claimant's assigned duties was to call engine crews for assignment. The claimant was charged with improperly placing his brother, a locomotive fireman, on assignments to which he was not entitled. Charges were preferred against the claimant, another clerk, and the fireman on September 20, 1977, with investigation originally scheduled for 9:00 A.M., September 28. The investigation was postponed and rescheduled for 9:00 A.M., October 13, at the request of the Division Chairman of the petitioning organization. It was again postponed at the request of the Local Chairman of the U.T.U. -E. and rescheduled for 9:00 A.M., Wednesday, October 26, 1977. A copy of the transcript of the rather lengthy investigation has been made apart of the record.

The Board has carefully reviewed the entire record, including the letter of charge, the transcript of the investigation, and the submissions of the parties. We find that none of claimant's substantive procedural rights was violated. The charge was filed within the time limit specified in the Agreement. The charge was sufficiently precise to enable claimant and his representative to prepare a defense. The investigation was conducted in a fair and impartial manner. The claimant was present throughout the investigation, actively participated, and was represented by the Division Chairman. On November 14, 1977, claimant was notified by the Superintendent of his removal from the service for violation of Rules 2, 14, 16 and 32-B, General Rules for the Guidance of Employees, 1975, which rules read:

Rule 2

"Employees must be conversant with and obey the Company's rules and special instructions. If an employee is in doubt, or does not know the meaning of any rule or instruction, he should promptly ask his supervisor for an explanation. A copy of Form 2626 Std. is furnished each employee to be retained by him for his guidance."

Rule 14

"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."

Rule 16

"**Employees must not be careless of the safety of themselves, or others; they must remain alert and attentive and plan their work to avoid injury. Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious.**

Employees must conduct themselves in a manner that will not bring discredit to their fellow employees or subject the company to criticism or loss of good will."

Rule 32-B

"**Acts of disloyalty, dishonesty, desertion, intemperance, insubordination, willful neglect, gross carelessness, immorality, violation of rules whereby the Company's property is endangered or destroyed, making false reports or statements, being quarrelsome or vicious, concealing matters under investigation, etc. will subject the offender to immediate dismissal."**

The fireman was also dismissed from service.

From our review of the transcript of the investigation, the Board finds substantial evidence to support the charge against the claimant. Also, claimant's prior work record, which was made a part of the record in the on-property handling, was far from satisfactory. He had previously been removed from service on October 28, 1965, for misappropriating another employee's paycheck, forging his name to it and cashing it. He was reinstated on a leniency basis on December 22, 1966. His record also shows that he had been disciplined and reprimanded repeatedly for improper performance of work or improper conduct. It is well settled that the past record of an employee can properly be considered in arriving at the penalty to be imposed.

The Board finds no proper basis for interfering with the discipline imposed. The claim will be denied.

FINDINGS: The **Third** Division of **the** Adjustment **Board**, upon the whole record and all the evidence, finds and holds:

That the parties waived oralhearing;

That the Carrier and the **Employes** involved in this dispute are respectively Carrier and **Employes** 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 :

A. W. Paulose
Executive Secretary

Dated at Chicago, Illinois, this **14th** day of December 1979.