

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22991
Docket Number CL-23214

A. Robert Lowry, Referee

(Brotherhood of **Railway**, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8939)
that:

1. Carrier violated the **Agreement** between the parties when, effective December 1, 1978, it unjustly aaaaaed discipline of dismissal on Mr. **M. A. McClain**, Centralia, Illinois.
2. **That** Carrier's action was an abuse of managerial discretion.
3. Carrier shall now restore **Mr. M. A. McClain** to service with seniority and all other rights **unimpaired**, and compensate him for all wage loss **commencing** December 1, 1978, **and** continuing until he is reinstated.

OPINION OF BOARD: During the months of August and September, 1978, M. A. **McClain**, the claimant, was employed by the Carrier as telegraph operator at **Toland**, Illinois. The Carrier charged claimant with using railroad credit without authority in making **personal** telephone calls on Carrier's **commercial** telephone at **Toland**.

Claimant was properly informed **under the** rules of the agreement to appear for investigation for the purpose of ascertaining the facts and determining his **responsibility** in connection with the charges. The investigation was held as scheduled on November 16, 1978. A copy of the transcript of the investigation was **made** a part of the record. **Claimant** was notified by letter of November 29, 1978 of his dismissal. 2

The Board finds after carefully examining the entire record, including the transcript of the investigation, substantial **evidence** in support of Carrier's charge of unauthorized use of the **commercial** telephone using Carrier's credit. **The record** also shows the claimant had been reprimanded for similar **misuse** of the Carrier's **commercial** telephone in February, 1978, and he had agreed at that time to refrain from **using** the Carrier's telephone for personal use. 3

11
Claimant just prior to **commencement** of the **formal** investigation presented Special Agent Gray with **his** personal check in the amount of \$13.05 covering the eight **personal** telephone calls he made from **Toland** to his **home** in Centralia, Illinois. This check **was** later returned **from** the bank to the Carrier **marked** "insufficient funds."

5
Claimant testified that he wade the calls to his home, however, he denied waking the call to Jacksonville which was of 85 minutes duration and cost \$14.55. This latter call, Like the others, was **made** from the **Toland** office during **claimant's** assigned hours. The Carrier upon checking found this number in Jacksonville to be an unlisted number and when called the party answering refused to cooperate or confirm who **made** the subject call. **However**, since the claimant was the operator on duty at that time he was responsible for what took place in his office and, therefore, responsible for the telephone call to Jacksonville, irrespective as to who **made** the call.

6 X
The Board confirms the discipline but believes the punishment was excessive. We, therefore, conclude, and **so award, that** the **claimant** be restored to service with seniority and all other rights unimpaired without back pay and upon the further condition that claimant reimburse Carrier for the personal telephone calls **made** wing Carrier's credit, this to include the Jacksonville call. The **record** shows two amounts due: \$13.05 for the eight calls to his **home**, and \$14.55 to **Jacksonville**, a total of \$27.60, which amount, if claimant cannot pay upon reinstatement, may be withheld from his subsequent payroll vouchers.

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 weaning 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 discipline imposed was excessive.

A W A R D

claim sustained in accordance with the Opinion.

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

ATTEST:

A.W. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.