NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23112
THIRD DIVISION Docket Number CL-23196

Paul C. Carter, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8900) that:

1. Carrier violated the Agreement between the parties when it withheld Mr. E. J. Holman, Jr. from its service and subsequently dismissed him from its service following formal investigation held April 21, 1978, after failing to prove Mr. Holman was guilty Of the allegationplaced against him. (Carriers File 205-5352).

2. Carrier's actionin dismissing Mr. Holman from its service on an unproven allegation wasunjust, unreasonable and an abuse of discretion.

3. Carrier shall now be required to return and reinstate Mr. Holman to its service with all seniority rights unimpaired and compensate him for any and all losses sustained.

4. Carrier shall now be required to expunge the investigation transcript and all references thereto from Mr. Holman'spersonalrecord.

OPINION OF BOARD: Claimant, who had been in Carrier's service about twenty-three years, was assigned as Interline Analyst, 7:55 A.M. to 4:40 P.M., meal period 12:20 P.M. to 1:05 P.M.

On June 15, 1971, the Carrier's Director of Revenue Accounting issued the following instructions to All Employes:

> "You are cautioned to obey the rules regarding the cashing of paychecks on payday at the last 15 minutes of the work day. When you sign the request Form 33315 for permission to leave the office 15 minutes early to go to Mercantile Bank across the street for the purpose of cashing your paycheck, you must go to that bank and cash the check within the alloted time.

"Investigation disclose0 that there have been violations regarding this practice and this will serve as 8 warning that such violations will not be tolerated in the future.

"Employees that do violate this practice will be taken out of service and a formal investigation will be held which may lead to dismissal from service."

On April 14, 1978, claimant was instructed to report to the office of Manager of Revenue Accounting, on Wednesday, April 19, 1978, for formal investigation:

". . . . . to develop the facts and place the responsibility, if any, in connection with the charge that you failed to comply with instructions concerning cashing of paychecks during assigned hours and the charge that you left your point of employment and absented yourself from your assigned duties without proper authority at approximately 9:15, April 14, 1978, in order to cash your paycheck at Mercantile Trust Company, 15th and Olive Streets, St. Louis, Missouri.

"This is to advise that you are being withheld from service pending investigation.

"Please arrange for representative of your choice and any witnesses desired by you.

"This investigation will be conducted pursuant to Rule 18 of the Agreement."

By agreement, the investigation was postponed to April 21, 1978. A copy of the transcript of the investigation has been made a part of the record. From our review of the transcript, we find that none of claimant's substantive procedural rights was violated. At the beginning of the investigation, claimant's representative objected to the charge as not being specific and precise. We consider the charge sufficiently precise to enable claimant and his representative to prepare a defense. It stated the alleged violation

and the date and *the time* of *ouch* violation. *Other* objections were raised by claimant's representative, none of which the Board considers of sufficient significance to invalidate the proceedings. On April 25, 1978, claimant was notified of his dismissal from service.

The Board has carefully reviewed the entire record and finds substantial evidence in support of the charge against the claimant. There were conflicts in the evidence adduced at the investigation, but it is well settled that this Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Claimant had previously been disciplined for a similar offense to the extent of what amounted to a one-day suspension. However, the Board does conclude -that the time that claimant has been out of service should serve as sufficient discipline. We will ward that he be restored to the service with seniority and other rights unimpaired, but without pay for time lost while out Of service.

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 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 discipline imposed was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1981.