

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23251
Docket Number CL-23177

Paul C. Carter, Referee

PARTIES TO DISPUTE: (The Cincinnati, New Orleans and Texas Pacific Railway Company
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(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

STATEMENT OF CLAIM: Carrier did not violate the agreement with the Brotherhood of Railway, Airline and Steamship clerks as alleged, when it dismissed Ms. Virginia Andrews, E-6 Line of Road Extra Board Employee, Cincinnati, Ohio, from the service of the carrier for cause on March 16, 1979.

Since the agreement was not violated, Ms. Andrews is not entitled to restoration to service with all rights unimpaired, and compensation for all time lost, beginning March 2, 1979, and continuing until such restoration has been accomplished, as claimed in her behalf by the Clerks' Organization.

OPINION OF BOARD: The claim in this dispute was submitted to the Board by the Carrier.

The record shows that Ms. Virginia Andrews was a Line of Road Extra Board Clerk on Carrier's Kentucky Division, and resided in Cincinnati, Ohio. Her seniority date was April 10, 1975:

On February 26, 1979, Ms. Andrews was instructed to attend an investigation at 10:00 A.M., Friday, March 2, 1979:

" in which you will be charged with conduct unbecoming an employee in that on October 27, 1978, November 7, 1978, and November 13, 1978, you made long distance personal telephone calls from your home to Atlanta, Georgia and Chicago, Illinois (Area Code 404-296-4240 and Area Code 312-751-4707) and charged these calls to the Carrier without authorization and the Carrier was subsequently billed for such calls.

"You say bring to this investigation any witnesses and/or representative you so desire."

Ms. Andrews did not appear at the investigation scheduled for March 2, 1979, did not contact the officer who preferred the charge as to why she would not be present, nor did she request postponement. We consider that she was acting at her peril in this respect. However, at the request of the Local Chairman of the Organization, the investigation was rescheduled for 10:00 A.M., March 13, 1979, by letter dated March 2, 1978, at which time she was also advised that she was being held out of service pending the investigation.

Ms. Andrews appeared for the second Investigation, held on March 13, 1979, a transcript of which has been made a part of the record. During the course of the investigation she admitted that she had placed the calls from her home telephone and charged them to the Carrier Without authority or approval from a Carrier officer. In the Investigation It was developed that two of the long distance calls were made to the headquarters of the Organization on the Carrier, located in Atlanta, Georgia, and two were made to the headquarters of the Railroad Retirement Board in Chicago, Illinois. The calls to Atlanta related to time claims that Ms. Andrews had pending against the Carrier, and the calls to the Railroad Retirement Board related to unemployment and sickness benefits which allegedly had not been paid to Ms. Andrews in a timely fashion.

The Board finds that all of the calls were of a personal nature, and did not concern the business of the Carrier. Any implied inter-relationship between the carrier and the Organization is Incredible.

The evidence is conclusive that Ms. Andrews was guilty of the charge against her. The charging of personal telephone calls against the Carrier constituted fraud. The record also shows that her prior work record had been far from satisfactory. She had previously been suspended on four occasions and cautioned on four occasions. The Carrier's action in dismissing her from the service was not arbitrary, capricious or in bad faith. We consider the circumstances in this case to be entirely different from those involved in Award 21566. The claim of the Carrier will be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

That the **dismissal** of **Ms. Virginia Andrews** is upheld.

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

ATTEST: *A.W. Paul*
Executive Secretary

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