

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23289**
Docket Number **CL-23440**

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(The Washington Terminal **Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GG9202)
that:

(a) The Carrier violated the **Rules** Agreement, effective July **1**, 1972, particularly Article 18, when it assessed discipline of dismissal on J. D. Evans, **Mail Handler**, Washington, D.C., **February** 23, 1979.

(b) Claimant Evans' record be cleared of the charges brought against him.

(c) Claimant Evans be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained **in** accordance with the provisions of Article 18(e). **Claimant** also be made whole for any **money** he was required to **spend** for medical and hospital services, or other benefits which would otherwise have been covered under Travelers' Group Policy GA-23000.

OPINION OF BOARD: At the time of the occurrence giving rise to the **claim** herein, February 6, 1979, **claimant** had been regularly assigned about three **and** one-half **months as** a mail handler at Washington, D.C. The **Organization** advises that he had previously been employed as a hostler for three and one-half years; was dismissed as a hostler, and re-employed a month later **as** a **mail** handler.

On February 6, 1979, he was reported to have been "getting the wail mixed up." **He** was instructed several times by his Gang Leader to stop mixing, but continued to do so. During the discussion between the claimant and his gang leader, the Assistant **Foreman** overheard them and instructed the claimant to straighten the mail up, i.e., put it on the proper trucks. Claimant did not do so and the **Assistant Foreman** took him out of the service.

On February 8, 1979, claimant was instructed to report for a hearing on February 14, 1979, on the charge:

- (1) "When at **approximately 2:20** a.m. on February 6, 1979 you were in an unfit condition to properly perform your duties when you did not comprehend and follow the instructions of your Gang Deader when he was unloading the Strasburg trailer, reading the mail, and calling the destinations to you; you placed the mail and continued to do so repeatedly on the wrong destination truck, which caused the **mail** to be badly mixed up."
- (2) "Violation of Washington Terminal Company General Rule 'N', '**...being insubordinate,...**', when at **approximately 2:20** a.m. on February 6, 1979 you would not comply with the instructions of your Gang Leader when he was unloading the Strasburg trailer, reading the **mail**, and calling the destination to you; you placed the mail **and** continued to do so repeatedly on the wrong destination truck, which caused the **mail** to be badly mired up. Shortly thereafter, your Foreman then **instructed** you to straighten the mail and place it on the right truck; you stood **there** and **made** no attempt to straighten the mail. Thereupon, you were removed from the service for insubordination; you then changed your clothes, **became argumentative** with your Foreman and it was then necessary to have you escorted **from** the property by the **WTCO**. Police."

The hearing was held as scheduled and a copy of the transcript has been made a part of the record. A review of the transcript shows that the hearing was conducted in a fair and impartial manner and that none of **claimant's** substantive procedural rights was violated. It was not a violation of the Agreement to insert claimant's prior **record** into the hearing or investigation.

In the hearing the Gang **Leader** testified that he explained to **claimant** how the mail was to be lined up, and that he told claimant four or five times to stop **mixing** the **mail** up. The Acting **Foreman** testified that he found claimant **unwilling** to keep the mail separated on the hand trucks as instructed by the Gang Leader; that he instructed the **claimant** to follow through with the Gang Leader's instructions "but he refused and **stood** looking at **me**."

On February 23, 1979, claimant was notified of his dismissal from service on the basis that he was guilty as charged.

Based upon **our** review of the entire record, the Board concludes that discipline was warranted. As stated in our recent Award No. 22638:

"Although supervisory discretion might well have prevented the confrontation in **this** case, there is no way to escape Claimant's culpability. Insubordination does not consist solely in the flat **refusal** to perform **assigned** work. . . ."

and in Second Division Award No. 7128:

"... Insubordination **may** occur without a stated refusal to do the work, as in the instant case, where the employee's actions were diametrically opposed to complying with the lawful instructions of his supervisor."

While **discipline** was warranted, we consider permanent **dismissal** as excessive. The **time** that **claimant** has been out of service should constitute sufficient discipline. We will award that claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while cut 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 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 dismissal was excessive.

A W A R D

Claim sustained to the extent indicated in the Opinion.

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

ATTEST:


Executive Secretary

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