

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Josef P. Sirefman, Referee

Award Number 23471
Docket Number CL-23222

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8913) that:

(1) Carrier violated the Clerks' Rules Agreement at Bensenville, Illinois when it charged Employee W. H. Barton, held an investigation and dismissed him without proving the alleged charges.

(2) Carrier shall now be required to reinstate Employee W. H. Barton, clear his record of the alleged charges and compensate him for all lost time commencing December 6, 1978 and continuing until he is returned to service.

(3) Carrier shall further be required to pay premiums for claimant's health and welfare, life insurance and dental plan coverage which it would have made had it not unjustly dismissed him from service.

(4) Carrier shall further be required to pay interest at the rate of seven and one-half (7½) percent per annum, compounded annually on the anniversary date of this claim based on the amount due in Item (2) above.

OPINION OF BOARD: Claimant W. H. Barton, a Janitor, was issued a November 23, 1978 Notice of Investigation to be held on November 29, 1978;

"...for the purpose of developing the facts and circumstances in connection with your alleged solicitation of, and acceptance of monies from a Railroad Contractor (Future Janitorio and Window Cleaning Service, R. Basulto prop.) for the award of a contract, or contracts."

The notice further specified three time periods from 1973 to 1978 when the claimed solicitation and payment occurred. On December 6, 1978 Claimant was dismissed.

At the investigation various Carrier officials stated that they had interviewed Mr. Basulto on separate occasions and that he told them that Claimant had demanded and on occasion received checks made to the order of Claimant's wife for contracts to clean Carrier's facilities. Mr. Basulto did not appear at the investigation but his written statement containing information he had supplied in the interviews was included in the record.

The Organization contends that the record is insufficient to sustain discipline because it is based entirely upon hearsay, i.e., the contractor **did** not appear at the investigation, **his** written statement could not be **cross-**examined, **and** the testimony of the interviewers was cumulative repetition of the **Carrier's** charges rather than **independent** corroboration. In the opinion of this **Board** **Carrier's** decision to terminate **Claimant** was not based solely on hearsay. **Rather** there is **additional objective** evidence in the entire record, **namely** the three checks to the order of Claimant's **wife** for **\$250.00** each, **the said wife having been an employe** of the **Railroad** during the period involved, **and Claimant's** position as one concerned with the proper maintenance of the **Carrier's facilities**, all of which are consistent with and lend support to the contractor's assertions. There was substantial evidence to sustain the Carrier's **decision to discipline Claimant**. In view of **the seriousness** of the **misconduct termination** is reasonable.

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 Agreement was not **violated**.

A W A R D

claim denied.



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

ATTEST:

A. W. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.