NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23502
Docket Number CL-23806

THIRD DIVISION

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Atchison, Topeka ard Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (m-9320) that:

(a) Carrier violated the rules of the current Clerks' Agreement at San Bernardino, California, on May 23, 1979, when it wrongfully discharged Mr. D. M. Rowe from service, and

(b) Mr. D. M. Rowe shall now be reinstated and compensated for all monetary lose suffered commencing May 23, 1979, and continuing until such time that he is reinstated as a result of such violation of Agreement rules.

(c) The Carrier shall now be required to pay 10% interest compounded daily on all wages wrongfully withheld from Mr. D. M. Rowe commencing May 23, 1979.

OPINION OF BOARD: Claimant, with a seniority date of October 27, 1969, was regularly assigned to Assistant Schedule Clerk Position No. 6024, in Carrier's Superintendent's office at San Bernardino, California, with assigned hours 7:30 A.M. to 4:00 P.M., with a 30-minute meal period.

On May 1, 1979, claimant was notified by the Superintendent:

> "You are hereby notified to attend formal Investigation at Superintendent's Office, San Bernardino, 9:00 A.M., Monday, May 7, 1979, concerning your allegedly going thru private papers and reports in the office of the Joint Accounts Auditor in the Superintendent's Office, San Bernardino at about 1:15 P.M., Monday April 30, 1979, without proper authority, so as to determine the facts and place responsibility, if any, involving possible violation of Rules 2, 14, 16 and 20, General Rules for the Guidance of Employes, 1978.

"You may arrange for representation in line with the provisions of Agreement or schedule governing your working conditions, and you may likewise arrange for the attendance of any desired witnesses.

"Please acknowledge receipt of this notice on the attached copy and return It to my office promptly."

The rules referred to in the notice of May 1, 1979, read:

Rule 2: "Employes must be conversant with and obey the Company% rules and special instructions. If an employe is in doubt, or does not know the meaning of any rule or instruction, he should promptly aek his supervisor for an explanation. A copy of Form 2626 Std. is furnished each employe to be retained by him for his guidance."

Rule 14: "Employes must obey instructions from the proper authority, in matters pertaining to their respective branches of the service. They must not withhold information, or fail to give all the facts regarding irregularities, accidents, personal injuries or rule violations."

Rule 16: "Employes must not be careless of the safety of themselves, or others; they must remain alert and attentive and plan their work to avoid injury.

Employes must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious.

Employes must conduct themselves in a manner that will not bring discredit on their fellow employes or subject the company to criticism or loss of goodwill."

Rule 20: "The affairs of the Company must not be divulged nor access to the Company's records permitted without proper authority."

The investigation war conducted as scheduled. A copy of the transcript of the investigation has been made a part of the record. A review of the transcript shows that none of claimant's substantive procedural rights was violated. The investigation was conducted in a fair ad impartial manner. On May 23, 1979, claimant was dismissed from service.

In the investigation there was substantial evidence, including claimant's statement, that at about 1:15 P.M. on April 30, 19'79, claimant did enter the office of the Joint Accounts Auditor, went through private papers and reports and copied information therefrom, and that he had no authority to do so. It was also brought out in the investigation that the information that claimant copied was available from other sources; however, this would not give the claimant the right to copy the information that he did from the book of the Joint Accounts Auditor. In fact, the only times that claimant had any business in that office was to deliver or pick up mail.

Claimant was subject to severe discipline for his actions. However, the time that he 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 out of the service. However, the claimant should understand that the purpose of this award is to give him one last chance to become and remain a dependable and reliable employe of the Carrier and that further major Infractions on his part will result in the permanent termination of his services.

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 permanent dismissal was excessive.

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1982.