

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24214  
Docket Number CL-24255

Robert W. McAllister, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-9508) that:

(a) Carrier violated the Clerks' Agreement in Chicago, Illinois, when it removed E. W. Davis from its service as a result of investigation held on June 16, 1980.

(b) E. W. Davis shall now be reinstated to Carrier service with all rights unimpaired and compensated for all monetary loss suffered on his Lead Service Bureau Clerk-Claims position at Chicago as a result of being removed from service.

(c) In addition to the monies claimed, E. W. Davis shall now receive ten per cent (10%) interest on monies claimed, such interest to be compounded on each and every pay period from date of removal from service forward for the period of time Claimant is held out of service (40 hours per week).

OPINION OF BOARD: On June 3, 1980, the Carrier issued Claimant three separate notices of formal investigation. The charges were indifference, insubordination and quarrelsome conduct; failure to protect assignment; and threatening a Carrier representative; The Claimant, Elbert W. Davis, Jr., is employed with the Carrier as a Lead Claims Clerk (temporary) with seniority since August 1, 1974. The three investigations were held, and Claimant was deemed to be responsible for two of the above charges, but not for failing to protect his assignment. He was removed from service for violation of Rules 14 and 16, herein restated:

"Rule 14

Employees 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

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

"**Employees** must not be Indifferent to duty; insubordinate, dishonest, **immoral**, quarrelsome or **vicious**.

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

The Organization contends the removal of **Claimant** was without just cause. Additionally, it asserts **Claimant's** removal was the result of **investigations** which were not fair nor impartial.

The records speak for themselves. Cognizant of the seriousness of the Organization's claim this Board has carefully analyzed both records and, particularly, the hearing transcripts. Our conclusion is that the conduct of the parties at those hearings is less than a model for such forums. However, on the whole, we cannot conclude that the basic essentials necessary for guaranteeing a fair and impartial hearing were so lacking as to be fatally prejudicial or procedurally defective.

There is really no question concerning the Status Report. The Claimant had no justification for not turning it over to the Transportation Service Center Manager. Based on the transcript before us, this Board supports the Carrier's finding with respect to the charges Claimant's quarrelsome conduct on May 28, 1980, did constitute insubordination. The charge involving a threat results from a telephone conversation between the Claimant and his aforementioned manager. The Claimant admitted he was upset and angry on June 2, 1980, because he was charged with being absent without authorization when he, in fact, believed he was on approved sick leave. We note these latter charges were dismissed as a result of a hearing. The Claimant denies he threatened his manager. The Hearing Officer chose to accept the testimony of the manager and another Carrier witness. Our review of the record does not find those determinations of credibility to be in conflict with the weight of the evidence developed at the hearing.

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This Board has determined the Carrier was justified in imposing discipline upon the Claimant. We do not agree with the Carrier that, under the specific circumstances of this case, Claimant's conduct justified discharge from service. For discipline to be effective, there must be a reasonable relationship between the penalty imposed and the charged offenses. Herein, in view of the Claimant's years of service and clean record, we believe the penalty was harsh and excessive. Therefore, this Board states the period of time the Claimant has been out of service since his dismissal shall be viewed as a suspension. Claimant is to be restored to 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 Employee involved in this dispute are respectively Carrier and Employee 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 was excessive.

A W A R D

Claim sustained in accordance with the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.