

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24238
Docket Number CL-23756

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: { **Brotherhood of Railway, Airline and Steamship clerks,**
 { **Freight Handlers, Express and Station Employees**
 { **Chicago and North Western Transportation Company**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
 m-9319) that:

1. Carrier violated the Agreement Rules, particularly Rule 21, when under date of February 27, 1978, it assessed discipline against Mr. Louis J. Wierichs in the form of a twenty (20) day actual suspension, and, in addition, disqualified him from multiple-man Agencies, a condition which caused him to lose his regular position of Supervising Agent at Appleton, Wisconsin, and,

2. Carrier shall be required to clear Mr. Louis J. Wierichs' records and restore him to his regular Agent's position at Appleton, Wisconsin and compensate him for all losses suffered, to include compensation for the twenty (20) day suspension, and full reparations until the instant violation ceases, account not allowed to work his regular Agent's position. .

OPINION OF BOARD: Claimant objects to a twenty-day suspension and being his-qualified from multiple-man agencies, a condition which caused him to lose his regular position as supervising agent at Appleton, Wisconsin.

The Carrier's basis for its action is a hearing based upon the charge that the claimant made a false statement in the investigation on February 8, 1978 wherein he stated that he had no previous knowledge of discrepancies on the Appleton clerical payroll and falsification of the Appleton '64 Report for the period ending January 31, 1978.

With respect to the first charge, a review of the transcript indicates that a clerk had reported to the claimant that he had received an anonymous phone call with respect to the chief clerk not being on duty, totally unsubstantiated by any details. It is difficult to translate this into his having knowledge that the clerk was indeed falsifying the payroll records. This Board finds that the charge has not been substantiated on the record.

With respect to the second charge, the falsification of the Appleton '64 Report, the record shows that this was a report that was traditionally prepared by the chief clerk even though it was executed by the claimant. While the claimant is responsible for the document in the normal course of things, it would take much effort to actually verify the details of the report which, at best, was a record

of how the station was doing. The chief clerk was a trusted employe and obviously the claimant was, to some degree, negligent for having not supervised him more closely; however, it is apparent to this Board that the discipline imposed in this instance is excessive. The principle has been well established that this Board should not substitute its judgment for that of the Carrier where it has produced substantial evidence that a charge was committed. However, the Board feels that the punishment in view of the claimant's ten years of unblemished service was excessive.

It is the Board's conclusion that the twenty-day suspension should be reduced to ten days, and if it has not already done so, that the Carrier restore the claimant to his supervising agent's position at Appleton, Wisconsin without pay adjustment for the intervening period.

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.

