NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24699

THIRD DIVISION

Docket Number m-24681

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Consolidated Rail Corporation
((former Penn Central Transportation Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Trackman H. C. Bradley for alleged Misuse of company funds in that you charged your lodging at the Travel Lodge Motel in Massillon, Ohio under an assumed name when not entitled to compensation for motel charges under any circumstances on the following dates: September 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, October 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,11, 12, 13, 14, 15, 16,29, 30, 31, November 1, 2, 3, 4, 5, 6, 7, 8, 9, 1978.' (System Docket No. 566).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: On August 21, 1979, Claimant received notice to appear for trial on August 30, 1979 for alleged misuse of Company funds in connection with charges for lodging at Travel Lodge Motel at Massillon. Ohio on dates set forth above. By Agreement between the parties the trial was postponed to September 5, 1979. During the course of the hearing, it was interrupted for Carrier to develop additional evidence. Hearing was resumed and conducted on Sept. 20, 1979. Claimant was notified on September 21, 1979 of his dismissal from service.

Rule 6-A-l of the applicable labor agreement provides:

"(a) An employe who considers that an injustice has been done him in discipline matters and who has appealed his case in writing to his Superintendent within fifteen days, shall be given a hearing..

Appeal of Carrier dismissal notice was filed on October 23, 1979. Although carrier noted the lateness of the appeal, the case was reviewed with the Brotherhood in conference and carrier proceeded thereafter to consider the appeal and handling under usual procedures.

The main evidence on which Carrier based its disciplinary action was provided by L. D. Williamson who was employed by the Carrier with a welding gang and Sergeant J. T. McCaskie of Carrier Police Department. The action against claimant Bradley arose out of earlier Carrier charges against Mr. Williamson for alleged unauthorized residence at the Travel Lodge Motel at Massillon, Ohio during the months of September, October and November, 1978. Hearing on the charges against Mr. Williamson was held on August 1, 1979 by M.B. Leckie Ewing, Assistant Division Engineer.

Based on information developed by evidence adduced during Mr. Williamson's hearing it appeared Williamson's name was being used by someone else for the motel charges. The evidence indicated the other person to be H. C. Bradley, Trackman on another gang, who, on brief occasions, worked in the gang with Mr. Williamson. Carrier filed charges against Mr. Bradley and bis hearing was held September 5, 1979. Claimant was present at the hearing and was represented by D. Wheeler of the Brotherhood. Both participated in hearing and neither indicated that the hearing was not fair and impartial.

The evidence was clear and convincing in support of the charge that claimant used an assumed name for motel charges in which he was not entitled. He told Mr. Williamson, a fellow employee that he was staying at the motel during the period in question under another name. He did not admit to the use of Williamson's name but, instead, said he used the name of A. E. Smith. Moreover, a motorcycle, registered in the name of claimant was noted on the motel bills during the period covered by the allegations.

All of the above evidence supports the Carrier charges upon which the dismissal notice of September 21, 1979 was issued. There is more evidence, however. In an earlier Carrier action claimant was dismissed for like offense during July and August 1978. In that case he was returned to service on a leniency basis following appeal on his behalf by the Brotherhood. There is no evidence that he disputed the charges in the previous case.

Claimant's offenses amount to theft of Carrier funds by misappropriation and are compounded by his attempt to throw blame on a fellow employee. We can fully understand why their friendship dissolved when Williamson learned of the circumstances uncovered in this case. Claimant committed a substantial act of dishonesty in clear violation of the trust required between a carrier and its employees. Bad enough as a first offense, and sufficient to support dismissal action then, he repeated the same offense during the period for which he was tried in this case. There is no reasonable basis for sustaining his claim for reinstatement. There is a long line of decisions by the Division sustaining carriers in dismissal for theft as illustrated by the following:

Third Division Award 19735 - Referee Roadleq

"This Board has also held on numerous occasions that dismissal from the service of Carrier for a dishonest act is not an excessive application or an abuse of discretion." (Emphasis added)

Third Division Award 19486 - Referee Brent

"This Board has taken the position that Carriers are not required to retain employes who are dishonest or bring discredit to the Carrier in their service."

Third Division Award 17155 -Referee McCandless

"We have held that dishonesty, in any form, is a matter of serious concern and that dismissal from the service because of it is not an excessive application of discipline nor an abuse of discretion.'

Brotherhood raised objection over the delay of more than one year between the dates of the offenses and the date of hearing. While in most cases such an objection would appear reasonable, it must be noted in this case, that methods used by claimant were somewhat devious and difficult to establish. Moreover, bills for charges he made during September 1978 were not available for Carrier's investigation of suspected circumstances until May 1979. There is no sound basis for charging Carrier with undue delay in its efforts to clear up the problem.

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: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of February, 1984