

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24940
Docket Number CL-25100

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9719)
that:

1. Carrier violated the terms of the current Agreement, particularly Rule 21, when it dismissed from service Mr. Elbert Hale, Clerk at Proviso, account of formal investigation held on December 23, 1981, and,

2. Carrier shall be required to reinstate Mr. Elbert Hale to service with all rights unimpaired, and compensate him for all lost compensation, including fringe benefits, commencing December 29, 1981, and continuing until the violation is corrected.

OPINION OF BOARD: Prior to the occurrence giving rise to the claim herein, claimant was assigned to Position No. 108, Inbound Booking Desk, at Carrier's Proviso Yard, a hump classification yard. On December 15, 1981, claimant went on duty at 3:59 P.M., and was responsible for the handling of waybills for cars arriving at the yard. As a result of mishandling of Tank Car TLDX 817093, which contained chlorine and which the waybill indicated was a dangerous car, claimant was notified on December 21, 1981, to attend a formal investigation on the charge:

"Your responsibility in connection with your failure to properly perform you duties. Specifically, your failure to follow existing procedures governing the handling of Hazardous Commodities when you failed to prepare Form N-1244, and notify the Yardmaster, Yard 9 of the presence of TLDX 817093, Dangerous Car, containing Chlorine which arrived in IHB 6302 at approximately 9:50 P.M., December 15, 1981, while you were assigned Position 108, Inbound Booking Desk, commencing at 3:59 P.M. on that date."

The investigation was conducted on December 23, 1981, a transcript of which has been made a part of the record. From our review, we find that the investigation was conducted in a fair and impartial manner. Following the investigation, claimant was dismissed from service with the termination of his assignment on December 29, 1981.

In the appeal on the property and in its submission to the Board the Organization has contended that the investigation was not timely conducted as required by that portion of Rule 21(a) reading:

"The investigation shall be held within seven calendar days of the alleged offense or within seven calendar days of the date information concerning the alleged offense has reached his supervising officer."

In the on-property handling the Carrier's highest designated officer of appeals took the position that the Assistant Agent, who became aware of the incident during the early morning of December 16, 1981, was not a Carrier Officer; that a Carrier Officer was first aware of the incident on December 19, 1981. We are inclined to agree with the Carrier in this respect; however, assuming that the Assistant Agent was an officer of the Carrier within the provisions of Rule 21, the fact remains that he became aware of the incident on December 16, 1981, and the investigation on December 23, 1981, was on the seventh calendar day, within the rule requirement.

Based upon our review, we find substantial evidence in the investigation in support of the charge against Claimant. His error was serious. Severe discipline was warranted; however, we consider permanent dismissal excessive. The time that claimant 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 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 Employees involved in this dispute are respectively Carrier and Employees 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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.

