

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25042
Docket Number MS-25249

M. David Vaughn, Referee

(Larry Powell
PARTIES TO DISPUTE: (
(Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intent to file an **ex parte** submission **on** covering an adjusted dispute between myself and the L&N Railroad Company.

This dispute involves my dismissal from the services of the L&N Railroad Company on April 19, 1982, and subsequent claims appealed in my behalf to the highest officials of the Railroad Company, authorized to receive **same** by representatives of the Brotherhood of Maintenance of Way Employees.

I am claiming that I should be re-instated to the services of the L&N Railroad Company with seniority unimpaired and paid for all time lost.

It is my position that total and permanent dismissal for the offense indicated in the transcript is without just **or** sufficient cause."

OPINION OF BOARD: Claimant Larry Powell was a crane operator. He operated and was responsible for a Burro crane used in various maintenance operations. Claimant and the crane were assigned to a one-man floating maintenance of way gang, working with other gangs between Atlanta, Georgia and Nashville, Tennessee.

During a period from March 8, 1982 through April 15, 1982, Claimant made a total of eleven purchases of gasoline, oil, automobile parts, welding supplies and various hardware items of a total value of \$627.78. He signed for the items in the name of the Carrier, but converted them for his own use. He apparently pretended that the items were purchased for consumption or use by the crane in his charge. Some of the other items were used by the crane.

In addition to Claimant's purchase of gasoline and oil, he submitted claims for reimbursement for travel costs to and from his job sites when the gasoline for those trips had in fact been charged to the Carrier.

When the invoices were submitted to the Carrier's Division Engineer for payment, a review indicated that a number of the items which Claimant had charged to the Carrier were totally unrelated to the operation of the crane and that other items were purchased in quantities grossly in excess of any legitimate need for the crane. The Carrier conducted an investigatory hearing to determine whether the Claimant had engaged in misconduct. In that hearing, Claimant acknowledged purchasing the items for his personal use. He returned some of the items.

Following the investigation, the Carrier dismissed Claimant for violation of the Third Paragraph of Rule G, which states in relevant part:

"Acts of dishonesty . . . will subject the offender to dismissal.*

It is axiomatic that theft, conversion and fraudulent misrepresentation are dishonest. It is clear that the Carrier's Rule, for which Claimant was clearly charged with knowledge, makes dishonesty a dismissable offense. And quite properly so: the Carrier must be able to rely on the honesty and integrity of its employes, particularly those such as **Claimant**, who are entrusted with the responsibility for valuable equipment and are given the Carrier's authority to make purchases to maintain and operate the equipment.

Here. Claimant made a number of purchases, over an extended time, on a systematic basis, of items of a considerable value, and for the direct and obvious purpose of converting them to his personal use. He then compounded the offenses by claiming reimbursement from the Carrier for expenses which had, in fact, been charged to the Carrier through the purchase of gasoline.

It is true that Claimant expressed remorse for his actions. He returned part of the material he had converted. However, Claimant offered no explanation for his action in mitigation, and his **remourse** and attempted partial restitution occurred only after he had been confronted with clear evidence of his violation. Under the circumstances, the Claimant's response in the investigation offers no reason to reduce the Carrier's dismissal.

The Organization argued at earlier stages of the appeal that Carrier's investigation was invalid and the resulting discipline should be overturned because the Division Engineer prepared the case against Claimant, conducted the investigatory hearing and rendered the decision to dismiss Claimant. The Organization argued that the multiple roles played by the Division Engineer deprived Claimant of a fair hearing and requires overturning the Carrier's discipline. The hearing record indicates, however, that the Division Engineer's assistant, rather than the Engineer himself, **conducted** the hearing. More importantly, neither Claimant nor his Organization make or made any allegation that Claimant was deprived of a fair hearing.

A review of the transcript of the hearing gives no indication that Claimant was deprived of a fair hearing. Indeed, Claimant admitted the facts underlying the incidents, thereby admitting his violation of the Rule.

There is no evidence that Claimant was deprived of opportunity to refute the charges or to offer into evidence any facts or circumstances in mitigation of his actions. Under the circumstances, the Board does not find that Claimant's rights have been violated by the manner in which the hearing was conducted.

As a practical matter, many organizational units of railroads are small, and the official who heads the unit may also be the official charged with taking disciplinary action against employes. To require that different officials document the case and take final action would create unnecessary and rigid restrictions on the Carrier's administration of the railroad.

What is necessary is that the Claimant be afforded a full and fair notice of and opportunity to defend against the charges and to present evidence on his behalf. There is no indication that Claimant was denied those rights in this case or was otherwise prejudiced by the manner in which the Carrier's officials handled their responsibilities in the case.

Accordingly, for the reasons indicated, the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 26th day of September 1984.

