

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25689
Docket Number CL-25830

Hyman Cohen, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9905)
that:

(a) Carrier violated the current Clerks' Agreement when as a result of investigation held on February 14, 1983, it assessed the record of D. E. Story with thirty (30) demerits, and

(b) D. E. Story shall now have the thirty (30) demerits removed from his personal record and personal record cleared of all charges as stated in the formal investigation, and

(c) Claimant shall be allowed eight (8) hours at the protected rate of his position for date of investigation in addition to ninety (90) miles at 20¢ per mile to cover mileage from his home at Hutchinson, Kansas, to Newton, Kansas, and return as a result of investigation being held in Newton, Kansas.

OPINION OF BOARD: At the time of the events giving rise to the instant dispute, the Claimant was regularly assigned by the Carrier to Agent-TOC Position No. 6244 at Conway, Kansas. Following a Investigation that was held on February 14, 1983, the Claimant was assessed thirty (30) demerits for the unauthorized use of Company equipment at McPherson Depot on January 19, 1983. On the date of the Investigation, the Claimant was regularly assigned to Cashier Position No. 6058 at Hutchinson, Kansas due to his former position of Agent-TOC having been abolished on January 20, 1983.

On January 19, 1983, the Claimant was at the Carrier's depot in McPherson, Kansas between Noon and 1:00 P.M. in order to close out certain Carrier records pertaining to the closing of the Conway, Kansas station. In performing these duties, he converted the station working fund consisting of cash into postage stamps and was turning them in to the Manager of the Regional Freight office (MRFO). While at the depot the Claimant ran two (2) forms on the Carrier's copying machine concerning guaranteed or protective pay for employees. It is undisputed that the Claimant properly used the Carrier's copying machine to reproduce these forms.

The dispute between the parties is "vet whether the Claimant utilized the Carrier's copying machine to copy a handwritten "work sheet", the purpose of which he described as follows: "I drew the lines on the paper with intentions of trying to keep track of where protected people ate, the employees that are under protected rates of pay." The Claimant indicated that he "could have" placed the "work sheet" which he, characterized as "hand drawn" in the copying machine. Asked why it was in the Carrier's copying machine, the Claimant said that the "importance of it was so great that I

forgot **it.**" He then said that he "intended to make a copy but * * * didn't."

Based upon the record, the Board concludes that the Claimant violated Rule 29 which provides in relevant part, that "Employees may not appropriate railroad property for their personal use." The record establishes that the "hand drawn" document was found "face down on the machine". Furthermore, when the Claimant was asked whether he used "Santa Fe stationery" or provided his "own stationery" for the copies in dispute, the Claimant conceded that he used his "own paper", pushed "the handle down" and placed 2 sheets in the machine, after which he pulled "it up and you've got it". By the Claimant's admission, he used the Carrier's equipment for personal use. Indeed, had the copying machine been used for Carrier business, it is not likely that he would have used his "own paper" to copy the "work sheet".

Contrary to the position of the Organization, there is nothing in the record to warrant the conclusion that the Carrier disciplined the Claimant because it wished to harass and punish him because of his position as Division Chairman for the Middle Division of the Organization.

The Claimant has had a commendable record in his roughly 39 years of service with the Carrier. The Board is of the opinion that the penalty of 30 demerits for the offense in question is **unreasonable** and excessive and should be changed to a letter of reprimand.

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.

AWARD

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 November 1985.

