

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26097
Docket Number MS-26431

Edwin H. Benn, Referee

PARTIES TO DISPUTE: (Richard L. Japp
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(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"Whereby the carrier (Burlington Northern RR) did me wrong by violating the rules set-forth in the prevailing agreement in handling (sic) my claim, also, discharging me with-out any prove (sic) of the accusations that were against (sic) me in the 'Conflict of Interest' charge of two years ago prior to the investigation."

OPINION OF BOARD: Claimant was employed by the Carrier since August 27, 1973. At the time of his termination, Claimant was employed as a Material Manager. The incidents involved occurred while Claimant was an Assistant Material Manager at Alliance, Nebraska.

Claimant was initially informed of the charges against him on July 6, 1984, and the Investigation was scheduled for July 10, 1984. Claimant then requested and was granted a postponement. The Investigation Transcript from the rescheduled Hearing held July 19, 1984, (wherein Claimant provided witnesses, actively participated, asked questions of witnesses and made statements and testified on his own behalf) shows that on several occasions, Claimant made requests for various personal services and favors from businessmen who supplied the Carrier with products and services. Larry Kray, Manager of Nebraska Transport in Alliance, testified that he was asked by Claimant to provide free liquor, money, football tickets, a trip for Claimant and his wife to Las Vegas in Nebraska Transport's Company plane and various hats, favors and other items.

During an Investigation conducted by Director of Material H. H. Pennell, which led to the charges against Claimant, one Kenneth Hutton, Manager of Olson Tire Company in Alliance, was interviewed and further gave a statement. According to Hutton's statement, Claimant requested that Hutton provide Claimant with trinkets such as pens and hats for a rodeo, jackets for his own personal use and free services for his own personal vehicles. Another statement from a Brown Transfer Company employe, Larry McKibbon, indicated that Claimant requested that McKibbon purchase Claimant cigarettes since Claimant was one of Brown's best customers and Claimant further asked McKibbon if he could borrow \$1000.00 to finance a vacation.

Claimant denied the allegations made against him or stated that he did not specifically recall instances of misconduct attributed to him.

By letter dated July 26, 1984, the Carrier dismissed Claimant from service.

Safety Rule 564 provides:

"Employees will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who conduct themselves in such a manner that the railroad will be subjected to criticism and loss of good will."

A careful review of the record establishes, in our opinion, that there is substantial evidence to sustain the Carrier's action. We find nothing to indicate that the Carrier's actions were arbitrary or capricious. Notwithstanding the statements gathered during the Investigation attributing solicitation of favors to Claimant (and even if we did not consider those statements), clear and direct testimony was given by a neutral witness, Larry Kray, that Claimant indeed used his position with the Carrier to solicit favors from a Company doing business with the Carrier. The kind of conduct attributed to Claimant is clearly prohibited by Rule 564. In light of the scope of this Board's review power, in cases such as this, Claimant's bare denials, without more, are insufficient to change the result that substantial evidence exists in the record supporting the Carrier's decision to terminate, which we find was neither arbitrary nor capricious.

Claimant appears to raise a series of other arguments of a procedural nature which we find to be without merit. The specified time limits for the processing of the Claim were met. Further, a review of the proceedings and Claimant's assertions, satisfies us that the Hearing was conducted in a fair and impartial manner and Claimant was given ample opportunity (which he made use of) to present evidence and arguments and to examine and cross-examine witnesses.

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 Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1986.