

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26113
Docket Number MW-26207

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Consolidated Rail Corporation

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

(1) The dismissal of Trackman R. Morio, Jr. for alleged 'misuse of Company facilities' was arbitrary, unwarranted and on the basis of unproven charges (System Docket CR-434-D).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was dismissed following a Hearing on basis of which Carrier held him responsible for telephone billings not authorized, but charged to Carrier's account.

Carrier presented substantial evidence that personal calls, totalling \$32.56 in phone charges made against Carrier, were placed on Claimant's premises from the private telephone connection he maintained. Claimant admitted in his testimony to making two such unauthorized calls charged to Carrier.

The Board confirms the discipline but believes the punishment was excessive.

We therefore award that Claimant be reinstated with seniority and all other rights unimpaired, but without compensation for time lost, and with \$32.56 as restitution due Carrier to be deducted from Claimant's pay at outset of resuming his duty with Carrier. Claimant's conduct appears from the transcript of proceedings to have been less than befitting to the atmosphere of the Hearing, and explicit testimony and comment by him reflect an unbecoming and indeed unfortunate attitude on his part.

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

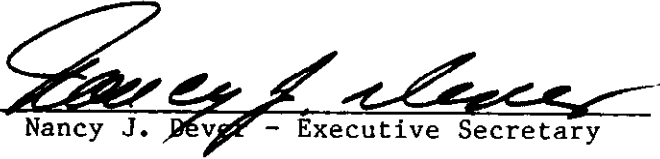
That the discipline was excessive.

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 19th day of September 1986.

