

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26121
Docket Number CL-26331

Philip Harris, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Green Bay and Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9996) that:

1) Carrier violated the Clerks' Rules Agreement on the Green Bay and Western when it charged Employee J. J. VanderZanden and held an investigation and dismissed him from service without proving the alleged charges.

2) Carrier shall now be required to reinstate Employee VanderZanden, clear his record of the alleged charges and compensate him for all lost time commencing July 25, 1984 and continuing until he is returned to service.

3) Carrier shall further be required to pay premiums for the claimant's health and welfare, life insurance and dental plan coverage, which it would have made had it not unjustly dismissed him from service.

4) Carrier shall further be required to pay interest at the rate of ten percent (10%) per annum, compounded annually on the anniversary date of this claim, based on the amount due in Item 2 above."

OPINION OF BOARD: On July 25, 1984, Claimant was terminated because the Carrier determined that during the preceding month he made unauthorized personal long-distance telephone calls while at work which were charged to the Carrier. The Organization contends that the burden of proof was not met because there was no substantial evidence produced for each toll call.

The Board sustains the Carrier as the trier of the facts, that the Claimant was indeed the one who placed the calls. The Investigation conducted by the Carrier was not flawed. However, in light of the Claimant's length of service and personnel record, we've determined that the discipline imposed was excessive. Claimant should be returned to service with seniority and all other rights unimpaired, but without backpay, and he is to refund to the Carrier the cost of the toll calls contained in the record.

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 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 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.

