

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

(Brotherhood 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-10118) that:

(a) Carrier violated the current Clerks' Agreement at El Paso, Texas, when on June 11, 1985, it dismissed C. B. Ponzio from service, and

(b) Facts developed at the formal investigation held on June 11, 1985, failed to sustain Carrier's alleged charges and did not justify or warrant the harsh penalty imposed, and

(c) C. B. Ponzio shall now be reinstated to service of the Carrier with all rights unimpaired and paid for all monetary loss sustained as a result of being discharged on June 11, 1985, until reinstated, his personal record cleared of all charges, and

(d) C. B. Ponzio shall be paid an additional twelve per cent per annum until claim is paid."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant was the driver of a Company vehicle that was involved in an accident on May 17, 1985. Following an investigation, he was removed from service effective June 11, 1985, for allegedly submitting a false report and making a false statement on May 30, 1985, concerning an injury that he maintained he had sustained on May 17, 1985, as well as for being in violation of Rules 14, 16, 31(B) of Form 2626 Std. of the General Rules for the Guidance of Employees, effective 1978.

The Board has reviewed the entire record of this case, including the transcript of the investigation. We find that Claimant was afforded all procedural rights guaranteed by Agreement and that there was sufficient probative evidence brought forth at the investigation to indicate that Claimant was in violation of the parties' Agreement.

It appears from the record that the issue of a possible injury was not raised by Claimant until discussions were held with him about being disciplined for his involvement in the accident. An injury report was not filed until thirteen days after the alleged injury. At the same time, it also appears that while Claimant did visit a chiropractor on May 22, 1985, his primary reason for laying off at this time was to attend a family graduation, an event planned a week in advance.


The Board notes that at the time of his discharge, Claimant was a 32-year employee. We believe that while his infractions are not minor, the interests of both Carrier and Claimant would be best served by returning him to service with seniority and all other rights intact, but with no backpay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.