

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10056) that:

Claim No. 1:

(a) Carrier violated the provisions of the current Clerks' Agreement at Calwa, California, on or about April 25, 1984, when it wrongfully assessed the personal record of Mr. D. E. Simpson with twenty (20) demerits, and

(b) Carrier shall now remove the twenty (20) demerits and any reference to the formal investigation held on April 16, 1984, from the personal record of D. E. Simpson.

Claim No. 2:

(a) Carrier violated the rules of the current Clerks' Agreement at Calwa, California, when it removed Mr. D. E. Simpson from service on April 27, 1984, as a result of a formal investigation held on April 9, 1984, and

(b) Mr. D. E. Simpson shall now be returned to Carrier's service and paid for all time loss of wages and benefits commencing on or about April 27, 1984.

Claim No. 3:

(a) Carrier violated the rules of the current Clerks' Agreement at Calwa, California, when it removed Mr. D. E. Simpson from service on April 27, 1984, as a result of a formal investigation held on April 16, 1984, and

(b) Mr. Simpson shall now be returned to Carrier's service and paid for all time loss of wages and benefits commencing on or about April 27, 1984."

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 were given due notice of hearing thereon.

Claimant was subject to three investigative hearings in April 1984. Following these hearings, he was assessed 20 demerits as a result of the first hearing and was separately dismissed from service as a result of the charges in each of the second and third hearings. The incidents leading to the charges were discrete and will therefore be reviewed separately by the Board.

Claim No. 1

In this instance, the Claimant was charged with missing a call to protect a short vacancy in Position No. 6148, on duty time of 3:45 P.M. on April 2, 1984. The Claimant had checked earlier in the day as to where he stood for a vacancy. His explanation for missing the call was that he was en route from one location to another and had experienced car trouble. As argued by the Carrier, the Claimant could have notified the Carrier of his unavailability because of the car trouble, but he failed to do so.

Rule 15, cited in this instance, reads as follows:

"Employes must report for duty at the pre-scribed time and place and devote themselves exclusively to their duties during their tour of duty. Those subject to call for duty will be at their usual calling place, or provide information as to where they may be located. They must not absent themselves from duty, exchange duties or substitute other persons in their places without proper authority."

The record shows that the Claimant had been assessed 10 demerits less than two months earlier because of another missed call. The Board finds no basis to disturb the resulting penalty in this instance.

Claim No. 2

During this same period, the Claimant was sporadically employed by the Carrier and was therefore entitled to unemployment benefits from the Railroad Retirement Board. Among the dates he claimed such benefits were January 8 and 10, 1984. It is the Carrier's contention that the Claimant received wages for work on these dates. Thus, a charge of "deliberate falsification" was made against the Claimant.

The record shows clearly that pay for one hour and 45 minutes on January 8, 1984, was in actuality travel time pay in connection with work performed on January 7, 1984. There is simply no basis for maintaining that the Claimant had improperly filed for unemployment benefits for January 8, 1984, a day on which he did not work (the hours paid for being in connection with work counted for the previous day, which he stated on the RRB form that he was working and did not claim benefits).

The charge in reference to January 10, 1984, is surrounded by some confusion. The Claimant did submit a claim for unemployment benefits for both January 10 and 11, 1984. He was in fact called to work at 3:10 A.M. on January 11, 1984, but was told to record his pay form for January 10, 1984, since the work shift on which he was called had actually begun prior to midnight. The Claimant contends that his unemployment claim for both January 10 and 11, 1984, was an oversight, while the Carrier argues that the Claimant undertook a "deliberate falsification" in view of the fact he received pay for January 10, 1984 (for work commencing at 3:45 A.M. on January 11, 1984).

Thus, the Carrier's charge as to January 8, 1984, was without foundation. Whether the Carrier would have imposed the penalty of dismissal based solely on the January 10, 1984, charge (about which there is at least some confusion, as noted above) is unknown. The Board therefore finds that the penalty of dismissal on Charge No. 2 is not warranted.

Claim No. 3

On April 4, 1984, at approximately 1:45 P.M., the Claimant was called for service to commence at 3:45 P.M. He was reached at an automobile dealer's place of business, where the Carrier had knowledge that the Claimant was employed. The Claimant received the call and, according to his testimony, stated that he would have to "lay off." The Crew Caller's testimony was that the Claimant stated he would have to "lay off sick." Whichever is the correct version, the Claimant did not accept the call, apparently because of his work involvement with the automobile dealer.

For this, the Claimant was dismissed from service for violation of Rules 15 and 21, which read in pertinent part as follows:

"Rule 15

Employees must report for duty at the prescribed time and place and devote themselves exclusively to their duties during their tour of duty. Those subject to call for duty will be at their usual calling place, or provide information as to where they may be located. They must not absent themselves from duty, exchange duties or substitute other persons in their places with proper authority."

"Rule 21

All employees are expected to conduct their outside activities and affairs so as to avoid loss or embarrassment to Santa Fe which might arise from their influence on company decisions or their knowledge or company business and plants. Employees must not have personal interests which might conflict or appear to conflict with the interests of Santa Fe or which might influence or appear to influence their judgment in performing their duties.

Outside interests or activities covered by this policy include those involving any employee of Santa Fe or the spouse, children, any relative living in the household or any other close member of the family.

An unusual potential for conflict of interest is found in certain situations which are listed below. This list is not to be regarded as all-inclusive.

It is considered to be in conflict with Santa Fe's interest: . . .

(d) For an employee to accept outside employment which might affect his working efficiency on the Santa Fe."

The Board notes again that the Claimant's employment with the Carrier was sporadic at this time. While his efforts to obtain other income during such period is fully understandable, it is clear that such cannot be permitted to conflict with his obligation to the Carrier, if he wishes to continue in the Carrier's employment. The Claimant was in violation of Rules 15 and 21, but under all the circumstances the Board finds that the penalty of dismissal is unduly harsh. While directing the Claimant's reinstatement, however, the Board will not provide for backpay or retroactive benefits. This is in view of the Claimant's record previous to the claims considered herein, which show an egregiously poor record of absence and missed calls in the first four months of 1984. The resulting extended disciplinary penalty should make it clear to the Claimant that his employment status with the Carrier depends on his strict adherence to the Carrier's rules of conduct.

A W A R D

Claim No. 1 denied.

Claim No. 2: Claim No. 2 sustained, but without backpay or retroactive benefits in view of Claim No. 3.


Claim No. 3: Claim sustained in accordance with the Findings.

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Award No. 27165
Docket No. CL-26917
88-3-85-3-696

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1988.