

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10101) that:

1. Carrier violated the effective Clerks' Agreement when, following an investigation held on July 17, 1985, it suspended Clerk T. Milan from service for period of twenty-nine (29) days, commencing on July 22, 1985;

2. Carrier shall now compensate Mr. Milan for all time lost and as a result of this suspension from service, including all potential overtime, and shall clear his record of the charges placed against him."

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 employees 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.

Claimant has a seniority date of April 30, 1964. On June 21, 1985, he was directed to report for investigation:

" . . . for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with forty (40) waybills interchanged to the MILW (Chicago, Milwaukee, St. Paul and Pacific Railroad) delivered to the CNW (Chicago and North Western Transportation Company) Conductor Batustic with Engine No. 604-605 in error at about 6:00 a.m. June 16, 1985, resulting in twenty-seven (27) cars being delivered to the CNW Railway without proper waybill information on June 16, 1985, during your tour of duty as Switching Information Clerk, Position 384, starting at 10:05 p.m. June 15, and ending at 6:05 a.m., June 16, 1985."

An investigation was held on July 17, 1985, and Claimant was subsequently issued a notice of discipline informing him that he was suspended from actual service for twenty-nine days.

The record discloses that Claimant is a Clerk and on June 15, 1985, was working Position No. 384, the West Outbound Clerk. His tour of duty began at 10:05 p.m. and ended on June 16, 1985, at 6:05 a.m. During the shift following the Claimant's, the Carrier's Chief Clerk, received a telephone call from the C&NW's Proviso Yard. The Chief Clerk testified that he was informed that the C&NW was missing twenty-seven waybills and instead had in its possession a pouch containing forty waybills belonging to the Milwaukee Railroad. He informed the Trainmaster, who testified that an examination of the the West Departure Yard waybill box produced a pouch of bills that was labeled "Milwaukee" but instead contained the twenty-seven missing C&NW waybills. Further investigation of the incident revealed that the twenty-seven waybills were improperly signed out to the C&NW Conductor at or about 6:00 a.m. on June 16, 1985, during the Claimant's tour of duty.

The Organization contends that Carrier has failed to prove, by a preponderance of the evidence, that Claimant was guilty as charged. In the Organization's view, the record supports the conclusion that the waybills could have been handled by any number of other employees and that there was no evidence to prove that Claimant was responsible for the error. Additionally, the Organization argues that, even assuming, arguendo, that the evidence supported the charges against the Claimant, the penalty imposed was excessive and unreasonably harsh under the circumstances, since, at worst, Claimant's alleged error did not result in any financial liability or any other adverse effect upon the Carrier.

Upon careful review of the record and the evidence adduced at the Hearing, we are satisfied that no basis exists for disturbing the discipline assessed in this case. The substance of the Organization's argument is based upon an incorrect premise; i.e., that Carrier must prove the charged employee's guilt by a "preponderance of the evidence." As numerous Board Awards have established, Carrier's burden of proof is one of "substantial evidence," meaning "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Third Division Award 24308. Also see, First Division Award 16785, Third Division Award 9449.

The evidence elicited at the investigation is clearly substantial and sufficient to prove Claimant's culpability. Claimant himself admitted during the investigation that he handled all the waybills during his shift on the night in question; that all handwriting on these bills was his handwriting; and that he sent all the bills to the conductor of the C&NW train. Although the Organization maintained that someone else who had access to the waybills could have been responsible for the error committed here, we find that argument speculative at best. Argument is not evidence, and where the record supports the conclusion that the waybills were within the Claimant's control and utilized by him, we find that Carrier has met its burden of proof.

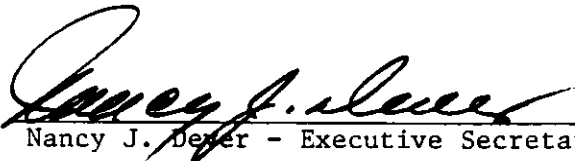
Nor do we find that the discipline imposed was excessive as urged by the Organization. Claimant's prior disciplinary record indicated that he has exhibited similar misconduct in the past, and that most recently he had been assessed a fifteen-day suspension for misrouting waybills. Under these circumstances, Carrier's assessment of discipline cannot be deemed unreasonable or improper.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1988.