

The Third Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10199) that:

(a) Carrier violated the current Clerks' Agreement at Houston, Texas, when on June 3, 1986, it unfairly and improperly removed Claimant Laughlin from the service of the Carrier, and

(b) Facts developed at the formal investigation held on May 27, 1986, failed to sustain Carrier's alleged charges and did not justify or warrant the harsh and severe penalty imposed, and

(c) Claimant Laughlin shall now be reinstated to service with the Carrier with all rights unimpaired and paid for all monetary loss sustained as a result of being dismissed, his personal record cleared of all charges, and

(d) Claimant Laughlin shall now 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.

Prior to the occurrence giving rise to the dispute herein, Claimant, with a seniority date of June 19, 1968, was employed by the Carrier as Customer Service Clerk at Houston, Texas.

On April 25, 1986, Claimant was instructed to attend formal Investigation on May 2, 1986, concerning a report that he was allegedly discourteous and indifferent during a telephone conversation with a customer on April 14,

1986, which subjected the Carrier to criticism and loss of good will, in possible violation of Rules 2, 14, 16 and 17 of Carrier's General Rules for the Guidance of Employees. In the notice of April 25, 1986, the customer was identified.

Following postponement, the Investigation was conducted on May 27, 1986, after which Claimant was dismissed from Carrier's service on June 3, 1986, for violation of Rule 16 of the General Rules for the Guidance of Employees, which Rule reads:

"Employees must not be careless of the safety of themselves, or others; they must remain alert and attentive and plan their work to avoid injury.

Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious.

Employees must conduct themselves in a manner that will not bring discredit to their fellow employees or subject the company to criticism or loss of good will."

A Transcript of the Investigation conducted on May 27, 1986, has been made a part of the record. Upon review the Board finds that none of Claimant's substantive Agreement rights was violated. Many Awards of this Board have upheld the admissibility of written statements, especially from non-employees, in disciplinary Investigations without the presence of the authors. (Third Division Awards 22618, 24764). We find that substantial evidence was adduced in the Investigation to show that Claimant was guilty of being quarrelsome, indifferent to duty, and actions which could subject the Carrier to criticism and loss of good will.

We find that severe discipline was warranted, but permanent dismissal was excessive. We will award that Claimant be restored to service with seniority and all other rights unimpaired, but without any compensation for time lost while out of service. The Claimant should understand that the purpose of this award is to give him one last chance to become a reliable, dependable and competent employee of the Carrier, but that further major infractions on his part will receive close scrutiny by all concerned.

A W A R D


Claim sustained in accordance with the Findings.

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Award No. 27863
Docket No. CL-28021
89-3-87-3-578

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.