

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Wayne Callow
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"NEC-BRAC-SD552-D Wayne Callow-50 Day Suspension

Carrier's dismissal from service amended to 50 day suspension."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

On the afternoon of November 13, 1985, Carrier's Penn Station Ticket Office General Supervisor received via Company mail several envelopes addressed to Amtrak employees. Those Amtrak stationery envelopes had been hand-addressed to the employees and bore in the upper left-hand corner the General Supervisor's business return address. The General Supervisor ascertained that no one in his office had sent the envelopes to the employees and he therefore opened one of them. Inside each envelope was a two-page unsigned diatribe directed against several incumbent Officers of BRAC (now TCU) by a dissident Organization identified as "The Committee for Fair Trade Unionism."

The General Supervisor, who had supervised Claimant in the past, thought he recognized the handwriting on the envelope as that of Claimant. He therefore called Claimant into the office for an interview. In the presence of two other Ticket Supervisors, at approximately 5:00 P.M. on November 13, 1985, the General Supervisor presented Claimant with one of the envelopes and asked if he knew anything about it. According to written statements and subsequent testimony from each of the three Carrier witnesses, Claimant admitted that he had reproduced the anti-union documents on a Company machine, stuffed and addressed the Amtrak stationery envelopes, and mailed the material to other employees via Company mail. By the account of these witnesses, Carrier stated that he had done this at the request of one "Danny Carroll,"

without considering that he might be improperly involving the Carrier in an intra-union dispute. At the conclusion of the interview, the General Supervisor suspended Claimant from service pending further investigation. Under the date of November 4, 1985, Claimant was served with the following notice:

"SPECIFICATION I

While employed as a Ticket Clerk, Penn Station, NY on or about November 12, 1985, you utilized AMTRAK Xerox equipment to reproduce unauthorized material.

SPECIFICATION II

While employed as a Ticket Clerk, Penn Station, NY on or about November 12, 1985, you utilized without proper authority AMTRAK paper and white AMTRAK logo envelopes.

SPECIFICATION III:

While employed as a Ticket Clerk, Penn Station, NY on or about November 12, 1985, you utilized AMTRAK mailing services and the services of other employees to forward said documents to other employees without proper authority.

SPECIFICATION IV:

While employed as a Ticket Clerk, Penn Station, NY on or about November 12, 1985, you were engaged in an unauthorized activity."

At the request of Danny Carroll, Claimant's designated representative, the Hearing twice was recessed, but then resumed and completed on December 18, 1985. At the Hearing, the three Carrier witnesses testified to the foregoing scenario, but Claimant flatly denied copying or sending the anti-union literature and also denied having admitted same. The Hearing Officer resolved the credibility conflict against Claimant, found him guilty as charged, and Carrier assessed the penalty of dismissal from service. During handling on the property, Claimant was restored to service after some fifty (50) days' suspension without pay. The Claim for exoneration and restitution was appealed to this Board.

The standards for review of discipline cases by this Board are too well established to require citation: 1) Did the accused employee receive a full and fair Investigation with due Notice of Charges, opportunity to defend and representation?; 2) If so, did the employer show by clear and convincing record evidence that the employee was culpable of the charged misconduct or

dereliction of duty?; and, 3) If so, was the penalty imposed arbitrary, capricious, discriminatory or unreasonably harsh in the facts and circumstances of the particular case?

We find in this record no fatal procedural defect and no deprivation of Claimant's contractual due process rights. The transcribed record of Investigation contains testimony from three direct witnesses which, if believed rather than Claimant's denials, plainly demonstrates his culpability and admission of culpability. In that connection, under the appellate system, this Board has no basis for reversing Carrier's resolution of the credibility conflict on the property. In addition, Carrier adduced an analysis by a handwriting expert to support its conclusion that Claimant addressed the envelopes. Finally, with respect to penalty, we find no valid grounds for modifying the fifty-day suspension without pay. Not only did Claimant misappropriate Company materials to his own use, but he showed an appalling lack of judgment and sensitivity to Carrier's interests and rights in its relationship with the duly authorized and certified bargaining representative of the clerical employees.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

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