

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(Trans-Continental Freight Bureau, Weighing and Inspection
(Department, South Pacific Coast Territory

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10125) that:

(a) Bureau violated the provisions of the current Clerks' Agreement at Bakersfield, California when it removed Mr. J. M. DeLorenzo from service as a result of a formal investigation held on July 10, 1985, and

(b) Mr. J. M. DeLorenzo shall now be returned to Bureau's service and paid for all wages and loss of benefits commencing on June 5, 1985, and

(c) Any reference to the charges and the formal investigation shall be removed from the personal record of Mr. DeLorenzo."

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 waived right of appearance at hearing thereon.

In June 1985, Claimant, a Bureau employee since 1971, held position of Traveling Inspector at Bakersfield, California. Under date of June 5, 1985, he received Notice of Charges and was suspended pending formal Investigation as follows:

"You are hereby withheld from service from Position No. 60, Traveling Inspector, Bakersfield effective close of business Wednesday, June 6, 1985, pending a formal investigation to be held in the Superintendent's Office, 717 Market Street,

Room 317, San Francisco, California, at 10:00 a.m., Tuesday, June 18, 1985, to determine the facts and place the responsibility, if any, in connection with the following:

Falsification of audit records including fictitious signatures of which we have received factual knowledge on June 4 and June 5, 1985-

A-7438-Reliance Products Division, Oakland, CA.

Date audit completed: 2-6-84

Falsification of signature of Lois Franmueller

A-6525-Metal Purchasing Company, Mulford, CA.

Date audit completed: 2-1-84

Falsification of signature of Carla S. Cunningham

A-106-Del Monte Corporation, Plants Nos. 7 and 35

Date audit completed: 9-22-83

Falsification of signature of Max P. Sauer

A-106-Del Monte Corporation, Plant No. 8 - Closed and empty 12-83

Date audit completed: 3-19-84

Falsification of signature of Re Canedera

A-1114-Safeway Stores, Preserving Plant, San Leandro, CA.

Date audit completed: 2-3-84

Falsification of signature of E. O. Nagel

A-4234-Simmons Company, Mulford, CA.

Date audit completed: 1-24-84

Falsification of signature of Mary E. Holston

A-2336-Pennzoil Company, Alameda, CA.

Date audit completed: 2-13-84

Falsification of signature of Ron W. Hagan"

Following agreed-upon rescheduling, a Hearing was held on July 10, 1985 and thereafter Carrier found Claimant guilty as charged and terminated him. A timely appeal was filed on procedural and merits grounds, which resulted in Claimant's reinstatement to service without backpay on January 9, 1986, with the appeal of the discipline and Claim for loss of wages and benefits progressed to this Board for determination.

We are met at the threshold of the case with the Organization's motion to sustain the Claim on procedural grounds, namely that the Bureau voided the discipline by noticing and holding the formal Investigation more than twenty (20) days after acquiring factual knowledge of the occurrence of the charged misconduct.

We note that the Notice of Discipline and Hearing dated June 5, 1985, specifies individual instances of alleged misconduct, the earliest of which was September 22, 1983, and the most recent dated February 22, 1984. In the circumstances, the two and one-half year delay constitutes prima facie evidence of a violation of Rule 19(a). The Bureau has the burden of showing that it acquired first knowledge of these occurrences no earlier than mid-May 1985, and, moreover, that it could not reasonably have acquired that knowledge earlier.

Our review of the record persuades us that the Bureau has met the burden of persuasion in this case. The evidence indicates that a Bureau Auditor discovered the irregularities in an audit of Claimant's accounts in March and April 1985. However, he did not report his findings to superior Officers because he was an old acquaintance of Claimant and "did not want to get him in trouble." In early June 1985, the Auditor was called to Chicago to explain why he was behind in his reports and at that time, on or about June 4, 1985, he revealed to the Superintendent his audit findings regarding Claimant's 1983 accounts. We find, accordingly, that the Notice of Charges and Hearing dated June 5, 1985, is not untimely under the twenty-day time limits of Rule 19(a). Thus we will decide this case based upon the factual record before us on its merits.

At the Investigation, Claimant admitted forging signatures on all of the accounts that he was charged with falsifying. Claimant testified in mitigation that he had been trained and encouraged to "take shortcuts" including falsification of signatures, by Bureau Officials, specifically including the Superintendent who subsequently discharged him for doing as he had been taught. Claimant testified further that others, including the Auditor, had been caught falsifying signatures in the past, but received only an oral reprimand, whereupon he had been singled out unfairly for discriminatory harsher discipline. Claimant's testimony on these critical points stands virtually unrefuted by the Carrier, even though the Superintendent and the Auditor were witnesses at the Hearing.

Based upon all of the foregoing, we shall direct the Bureau to reduce the six-month suspension without pay to a suspension of thirty (30) days duration. Claimant shall be reimbursed for wage salary loss for the period July 5, 1985, to January 9, 1986, in accordance with Rule 19(f).

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Docket No. CL-27425
89-3-86-3-669

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 4th day of May 1989.