

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

PARTIES TO DISPUTE: ( (Transportation Communications International Union  
(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10300) that:

(1) Carrier's action in the dismissal from service of Mr. Harry H. George, Computer Operator, Minneapolis, MN effective June 18, 1987, was arbitrary, capricious, and unreasonable.

(2) Mr. Harry H. George shall have his record cleared of all charges placed against him as a result of this dispute.

(3) Mr. Harry H. George shall be reinstated to the service of the Carrier with seniority and all other rights unimpaired.

(4) Mr. Harry H. George shall now be compensated for all wages and other losses sustained account of this arbitrary dismissal."

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.

Claimant was dismissed from service on June 18, 1987, following a hearing at which he was charged with five specific violations involving the use of a company name similar to that of the Carrier, falsification of a Carrier document, unauthorized possession of Carrier documents and supplies, absence without proper authority, and theft of hand tools belonging to an outside contractor.

Much of the evidence presented against Claimant was made available to the Carrier either by his estranged wife or her sister, who is an employee of the Carrier. Neither woman testified at Claimant's hearing, however, they told Carrier's police officers that the documents, supplies and hand tools were found in the residence Claimant formerly shared with his wife or in vehicles under his control. Claimant denied that he had taken any of these items from the Carrier's property, although he would have had access to them while working on his job in the computer room. In his defense, Claimant suggests that his wife and/or sister-in-law may have obtained these items in an attempt to frame him and cause him to lose his job. Their motivation for doing so, according to Claimant, was his refusal to increase the support payments he was making to his wife. Claimant's insinuation must be measured against the fact that most of the items could only have been obtained from the computer room, an area where access is restricted. There was, therefore, substantial evidence for the Carrier to reach the conclusion that Claimant had removed these items.

Claimant admitted that he left work approximately two hours early on one occasion in an effort to recover his automobile from his sister-in-law's house. He contends that he attempted to telephone the duty officer at home, left him a note and made sure that the work was covered by a fellow employee. Testimony by Claimant's supervisor indicated that there had been a practice of allowing employees to leave a little early if the work was done and arrangements were made with another employee on duty. While Claimant's early departure may have slightly exceeded the permissible time, this Board concludes that Claimant had satisfied the department's requirements.

The record supports a conclusion that Claimant falsified a document which was submitted to the court in support of his Claim for relief from payments to his wife. This document, which was shown to be altered, was obtained by the Carrier from the court and had the effect of understating his earnings. While the Carrier had no interest in the outcome of the court proceedings, it does have an interest in maintaining the credibility of documents issued on its letterhead and bearing the signature of its officials.

Finally, the record shows that Claimant received correspondence addressed to Sou Line PR at his post office box, including a collection letter from an attorney. There is no evidence, however, that Claimant used this name, which is similar to that of the Carrier, for the purpose of misleading anyone into extending him credit. Although the potential is there, there does not appear to be any confusion, nor is there evidence that any discredit was brought upon the Carrier as a result of the use of this name. While we recognize that employees may not use the name of the Carrier for their personal purposes, we cannot reach the conclusion that Claimant did so.

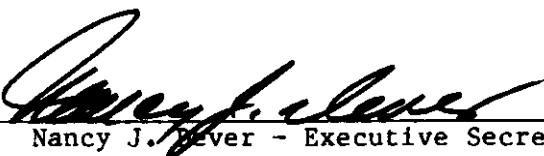
Claimant's actions in connection with the charges that were proven warrant discipline. There are, however, some extenuating circumstances. It is evident that Claimant's marital problems have caused serious job problems for him. Nevertheless, the Carrier has a right to expect loyalty and honesty from its employees. Claimant, therefore, is admonished to either resolve his problems or see that they do not follow him to work. We direct that Claimant be reinstated to service with full seniority and all rights unimpaired, but without compensation for time lost.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of September 1989.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 28130

DOCKET NO. CL-28541

NAME OF ORGANIZATION: Transportation Communications International Union

NAME OF CARRIER: Soo Line Railroad Company

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following Interpretation is made:

This Board, in Third Division Award 28130, directed that "Claimant be reinstated to service without loss of seniority, but without compensation for time lost." Upon Claimant's return to service, the Carrier placed him on Seniority District No. 2's Extra List. The Employees contend that Claimant should have been entitled to exercise his seniority in accordance with Rule 11(a), which provides, inter alia, as follows:

"An employee returning from leave of absence, vacation, sick leave, suspension, or service on a temporary vacancy, or reinstated as per Rule 33, may exercise seniority rights to any position bulletined during such absence or return to the position to which he holds bulletin rights and have five (5) calendar days thereafter to exercise seniority rights to any position bulletined during such absence."

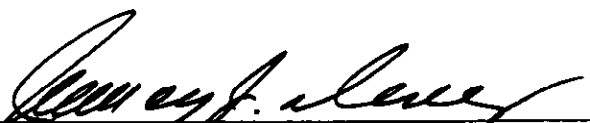
The Carrier has defended its action on the basis that Claimant did not fall into any of the categories listed in Rule 11(a). The Carrier argues that Rule 33, referred to above, applies to exonerated and is not applicable because Claimant was not exonerated. The Carrier further asserts that this issue is not appropriate for an Interpretation as this is a matter which was not before the Board in the original dispute underlying Award 28130.

We agree with the Carrier that the scope of Interpretation is somewhat limited. It does, however, provide an opportunity to explain the Award as originally made (see Interpretation No. 1 to Third Division Award 22556). In this regard, the effect of the Award was to find that Claimant's discharge was excessive and substitute it with a suspension for the length of time Claimant was out of service. Claimant was not exonerated, nor was he reinstated pursuant to Rule 34, which does not apply "in instances where the Brotherhood is formally handling the case under the provisions of [the] rules or has referred it off the property as provided in the amended Railway Labor Act." Claimant's rights and Carrier's obligations, therefore, should be governed by Rule 11(a) as it affects employees returning from suspension. How that Rule will operate in Claimant's case, however, must take into consideration facts such as whether or not Claimant held bulletin rights to the position he previously held or whether or not he attempted to exercise seniority within the time period specified in the Rule. Such a consideration goes beyond the scope of this Interpretation as it requires the consideration of facts and other provisions of the Agreement which are not in the record before this Board.

Referee Barry E. Simon, who sat with the Division, as a Neutral Member, when Award 28130 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1990.