

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Machine Operator A. E. Stoddard for alleged violation of Rule 'L' was without just and sufficient cause, on the basis of unproven charges and arbitrary (System File MW-88-45-CB/471-31-A).

(2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be reinstated with seniority, vacation and all other rights unimpaired, his record shall be cleared of the charge leveled against him and he shall be paid for all wage loss suffered."

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 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.

Claimant was charged with violation of Rule "'L" and, following an investigation, was dismissed from service on April 28, 1988. Rule "L" provides:

"Employees will conduct themselves in such a manner that their Company will not be subject to criticism or loss of good will."

The facts not in dispute are that on January 12, 1988, Claimant purchased some parts for his personal automobile from a local Ford dealer. At the time he was billed, the clerk at the car dealer asked him for his company affiliation in order to give him a discount, and then wrote the company name on the bill. Subsequently, Claimant wrote a personal check for the parts in the amount of \$78.94 to the dealer, which was returned twice for insufficient

funds. The bill was finally paid by Claimant on April 12, 1988. In the interim the auto dealer clerk called Carrier in an effort to seek assistance in the collection of the bill, thus making Carrier aware of the situation.

The Organization asserts that the Carrier has not met its burden of proof and has presented no evidence whatever that Claimant's activities subjected it to criticism and/or loss of good will. The Organization also notes that there was no wage garnishment involved. Carrier's position is based solely on the single phone call it received, as evidence that its public image was damaged.

Carrier takes the position that the evidence adduced at the Investigation substantiates Claimant's guilt. Further, Claimant's prior poor disciplinary record supports the conclusion reached as to the penalty of dismissal.

It has long been held that mere assertion is insufficient to establish a factual basis for disciplinary action: evidence is required. In this dispute, in particular, Carrier was obligated to show some evidence of damage to it as a result of Claimant's actions (see Third Division Award 21293), but it failed to do so. Accordingly, since Carrier did not meet its burden of proof the Claim must be sustained and Claimant will be reinstated and made whole in accordance with Article 14, Section 7 of the Agreement.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1991.