

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
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(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10455) that:

1. Carrier violated the TCU Agreement when, it issued discipline of actual dismissal to clerical employee, Mr. E. A. Bain, on the date of July 31, 1989 following formal investigation held on July 27, 1989.

2. Carrier's action violated Rules 24, 29 of the Agreement in the assessment of such discipline which was harsh, excessive, bordering on an abuse of discretion due to the facts and circumstances as brought out in the investigation.

3. Carrier shall now be required to reinstate Claimant E. A. Bain to service with pay for all time lost, seniority, vacation, personal leave, health and welfare and all other rights unimpaired effective July 27, 1989 and continuing five (5) days per week until corrected."

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 employee, 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 July of 1989, Claimant was notified of an Investigation concerning an assertion that he marked off sick (while holding other employment) in violation of Rule "P".

Subsequent to the Investigation, the Claimant was dismissed from Carrier's service.

The Claimant concedes that he was marked off on July 20, 1989, but he asserts that he was physically unable to perform his work for the Carrier. There is no question, from a review of the record, that the Claimant was actively engaged as a sales Representative for a local Buick automobile agency on that day.

There is no question that Rule "P" precludes working that interferes with proper rest or performance of railroad duties. Moreover, that Rule states that employees may not do any work during the tour of duty without permission.

Claimant raised certain procedural objections to the conduct of the Hearing, etc. However, we fail to find any detrimental activity to the prejudice of the Claimant's rights.

The Claimant has a seniority date of 1966. Under the entire record, we find that the imposition of permanent dismissal was unduly harsh and excessive. Claimant shall be restored to service with retention of seniority and other rights, but he shall not be reimbursed for compensation lost during the period of suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

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