

Award No. 4369
Docket No. CL-4348

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the carrier violated the Clerks' Agreement.

(1) When on November 3, 1947 the carrier dismissed Carl S. Sorenson from carrier's service for alleged delay in delivery of messages to the wire.

(2) Carl S. Sorenson be reinstated and compensated for all monetary loss due to this violation.

OPINION OF BOARD: Claimant, Carl S. Sorenson, was dismissed from the service of the Carrier on the charge of having unnecessarily delayed delivery of messages to the wire in violation of Rule 702 of the Rules and Instructions of the Communications Department at Omaha "U" Telegraph Office on October 9, 1947. Claimant was given an investigation in accordance with the requirements of the Agreement between the parties, and was found by the Carrier to be guilty as charged. The transcript of investigation contains much evidence in support of the Carrier's finding. The transcript also contains evidence in favor of Claimant, but this Board has repeatedly held that it will not resolve conflicts of evidence or weigh evidence in discipline cases; it suffices that there is evidence in the transcript of investigation, which, if believed, will support the finding of the Carrier.

The importance of prompt delivery of messages is obvious, and the Carrier has shown that it has sought to impress upon its messengers that promptness is very important. The messages in question were all made on a ditto machine at the same time and were ready for distribution at the same time, yet two of the messages were not placed on the wire until much later than were the other two. The testimony of employees Shaw, Breternitz, Brown and Merrill at the investigation supports the charge made against Claimant. It is contended that the testimony of employee Breternitz was biased against Claimant; in this respect the following excerpt from the transcript of investigation is pertinent:

"Q. Miss Breternitz, do you have any ill feeling towards Mr. Sorenson?

A. None whatever.

Q. Miss Breternitz, if you did have an ill feeling towards anyone would you make a false statement to get anyone in trouble? .

A. I would not.

* * * * *

Q. Mr. Brown, what do you know of Miss Breternitz record of truthfulness?

A. I have never known her to be untruthful in anything.

* * * * *

Q. Mr. Shaw, what do you know of Miss Breternitz record for truthfulness?

A. I don't know of anything against Miss Breternitz' record for truthfulness.

Q. Have you ever known of any instance where she has not been truthful?

A. No."

It is well settled that an employe's past record may be considered in assessing discipline, and also well established by many Awards of this Board that it should not order the reinstatement of an employe unless the evidence clearly indicates that the Carrier had acted arbitrarily, without just cause, or in bad faith; such is not the case here. See Awards 430, 1599, 2440, 4148, and 4326.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1949.