



Award No. 15926
Docket No. TE-16758

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago and North Western Railway (M&StL Division), that:

1. Carrier acted unjustly when it dismissed Agent-Telegrapher W. G. Durand, Monmouth, Illinois from service on April 28, 1966.
2. Carrier shall now reinstate W. G. Durand to the position from which dismissed, with seniority and vacation rights unimpaired, compensate him for all wages lost at the rate of the position from which dismissed.

OPINION OF BOARD: The essential facts involved in this discipline case are not in issue. Claimant had been assigned as Agent-Telegrapher, Monday through Friday, at Monmouth, Illinois for approximately nine and one half years before his dismissal from service by Carrier on April 28, 1966.

Prior to the instant controversy, Claimant bid off the Agent-Telegrapher job on April 8, 1966 to the position of relief telegrapher with different hours and days of assignment. An audit of his accounts was conducted by Carrier immediately thereafter, which resulted in the investigation conducted on April 26, 1966. It is undisputed that the evidence offered at the hearing established that the Claimant had neglected certain assigned duties as Agent-Telegrapher at Monmouth, Illinois including failure to properly maintain payroll records, tariff sheets and other reports. Petitioner does not deny Carrier's charges concerning Claimant's dereliction of duty, but contends that Carrier's action was unduly harsh and excessive in light of Claimant's thirty-eight years of service and Carrier's offer of reinstatement on a conditional basis.

Carrier denies that the ultimate penalty of dismissal was too severe under the circumstances and that its willingness to reinstate Claimant on a leniency basis, without compensation for time lost if Claimant would "disengage himself from all outside business activities," is not evidence of an admission against Carrier's interest. (Awards 9190, 11655 and 13462.)

The record reflects that the Claimant's neglect of duty encompassed a series of failures to perform many regular functions required of the Agent-Telegrapher at Monmouth, Illinois. Prior awards cited by Petitioner are readily distinguishable because Claimant received a fair and impartial hearing and no mitigating circumstances justify the Claimant's pattern of negligent conduct. Although Carrier may have been lax in supervising the Claimant's work during his tenure as Agent-Telegrapher, such laxity does not excuse the entire series of derelictions on the part of Claimant.

The willingness of Carrier to reinstate Petitioner on a leniency basis without compensation if he would give up his outside business activities is not an admission by Carrier that the penalty invoked was unduly harsh. Furthermore, the condition imposed by Carrier appears reasonable even though the Claimant was not discharged for engaging in outside activities. The conditional offer of reinstatement was refused by Claimant, and its rejection leaves us with no alternative but to deny the claim in accordance with the broad latitude given Carriers by this Board in the matter of assessing discipline. (Awards 1460, 14272 and 12438.)

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1967.