Award No. 15931
Docket No. TE-16507

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employes Union on the Illinois Central Railroad Company, that:

1. Carrier improperly dismissed B. J. Mainer from its service.

2. Carrier shall reinstate B. J. Mainer with all rights unimpaired and pay for all time lost.

OPINION OF BOARD: Claimant Mainer was dismissed from Carrier's service on August 20, 1965 following an investigation concerning a cash shortage in station funds discovered by Claimant while on duty on August 13, 1965. Specifically, Claimant was charged and found guilty of violating certain Accounting and Treasury Department Authorized Rules of Carrier pertaining to the handling of money by Agents.

Petitioner requests that Claimant be reinstated with back pay and all other rights unimpaired.

Initially, Carrier contends that the claim before the Board be dismissed because no claim for pay for time lost was presented on the property, where Petitioner merely sought reinstatement of Claimant with rights unimpaired on a leniency basis.

The record reflects that the first time Petitioner raised the question of back pay was in its letter of submission to this Board dated June 10, 1966. The original appeal by Petitioner's District Chairman sought only reinstatement of Claimant. Said appeal was ultimately declined on January 12, 1966 by Carrier's Director of Labor Relations because of Claimant's admitted failure to exercise proper care in handling money intrusted to him in his capacity as Agent. Thereafter, Carrier made a conditional offer of reinstatement which was rejected by Claimant as he would not have been permitted to work on positions "requiring bond or the handling of Company funds." Although the claim filed with this Board is broader than the claim processed on the property, it incorporates the substance of the original claim. Therefore, we will not dismiss the instant claim as requested by Carrier, except that part pertaining to pay for all time lost which is not properly before us. Award 11367.

Carrier further avers that the Claim is merely a request for leniency which is solely within the managerial discretion of the Carrier. Petitioner contends that the case was handled on property as an appeal from discriminatory action on the part of Carrier.

The Petitioner asserts that fifteen employes, including Claimant, handled cash at Carrier's station, and that only five were required to attend the investigation. The record reflects that all five, including the Claimant, were disciplined by Carrier but that the other four employes each received only thirty (30) days suspensions. The gravamen of Petitioner's contention is that Carrier was obligated to apply the disciplinary rules uniformly and that failure to do so constitutes discrimination.

Admittedly, Claimant had not maintained the proper cash allowance at Madison, Illinois; had failed to turn over station funds each day to his relief as required by Treasury Department rules; and had not counted cash funds for six days prior to his discovery of the loss while on duty. Claimant's particular negligence is most significant since he was on duty and directly responsible as custodian of the funds as Agent in Charge.

We do not have before us any evidence concerning the comparative culpability of other employes who were disciplined by Carrier to a lesser degree than Claimant. Consequently, we cannot evaluate the particular penalties imposed on others by Carrier. Furthermore, the negligent conduct of other employes is no defense or justification for Claimant's admitted carelessness. (Awards 11324, 1103 and 8488.)

In view of the foregoing, we must conclude that Carrier produced substantial evidence that Claimant failed to handle funds of Carrier in his custody in a responsible manner and that the penalty invoked was neither arbitrary, capricious nor in bad faith. In the absence of any probative evidence of discrimination on the part of Carrier, we find no valid basis here for substituting our judgment for that of Carrier. Awards 14358, 14248 and 15020. Accordingly, the claim will be denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of November 1967.

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