

Award No. 18362
Docket No. CL-18781

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

BURLINGTON NORTHERN INC.
(Formerly Great Northern Railway Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6772) that:

(1) Carrier violated the rules of the Clerks' Agreement when, on February 20 1969, it withheld Robert W. Frearson, OS&D Clerk, Vancouver, British Columbia, Canada, from service; and when, on March 17, 1969, it dismissed him from the service of the Company.

(2) Carrier shall now be required to clear his record and restore him to service with all rights unimpaired.

(3) Carrier shall be required to compensate him for all wages lost as a result of its action, including any losses suffered due to the termination of health and welfare insurance, Policy GA 23000.

OPINION OF BOARD: Claimant, a 48 year old employe with 28½ years service with Carrier, was dismissed from service on March 17, 1969, as a result of an investigation wherein he (Claimant) was found guilty of failing to comply with instructions from proper authority in violation of Rule 9 of the Operating Department Rules and Instructions for Station Clerical Forces, Yard Office and Freight House Employes. Specifically, the record indicates that the Carrier substituted Form 1522 for the old freight inspection Form 21; that the substituted form required the signature of the consignee who suffered loss or damage to freight; and that Claimant repeatedly failed to obtain such signature on the new Form 1522. The Organization contends that there was a back-log of old claims already being processed under the old Form 21; that the new Form 1522 was unduly complicated; that the guide lines furnished with the new Form 1522 only further complicated its use; and that Claimant was so snowed under with other work that the transition between the use of old Form 21 and the new Form 1522 was virtually impossible. The Organization further contends that the penalty of dismissal was arbitrary, capricious, and not commensurate with the offense. The Organization makes objection to the introduction of Claimant's past personal record (Carrier's Exhibits 2 through 7C). These exhibits show instances of Claimant's past un-

satisfactory service which may not be used in determining his guilt or innocence on the instant charge, but are proper for consideration in determining the degree of punishment in the event a finding of guilty is made. See Awards 16678, 15184, 12492, 13684 and many others. Therefore, the objection is overruled.

A very careful examination of the record indicates that Claimant at least tacitly admits to the charge lodged against him by Carrier and therefore, the appeal is merely for the purpose of obtaining leniency by a modification of the imposed punishment. This Board must, therefore, consider the seriousness of the offense and Claimant's past record in order to determine whether or not Carrier was justified in taking the action of discharging Claimant.

This Board finds that although Claimant had been in service of Carrier 28½ years, that at least the latter part of these years was not satisfactory service. Claimant had become antagonistic to his superiors and dogmatically independent to the point that he (Claimant) was usurping the managerial right of dictating procedure. In many instances, Claimant resented rightful supervision and resisted any attempt of his superiors to change what Claimant thought was the correct way to perform his assigned duties. It may be that Claimant pursued the best methods which were contrary to the methods being ordered by Carrier; however, it was never the prerogative of Claimant to override or resist Carrier.

It is the finding of the Board that the Claimant created an intolerable condition of his own making; that even though efforts by Carrier officials were made through private conferences with this Claimant, his (Claimant's) attitude was unchanged; and that Carrier had no other alternative then to discharge this Claimant.

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 December 1970.

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