



Award No. 18701

Docket No. CL-19093

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Arthur W. Devine, Referee

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**PARTIES TO DISPUTE:**

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

**LEHIGH VALLEY RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6858) that:

(a) The Carrier violated the current Agreement between the parties, when after Hearing and Investigation held on March 9, 1970, it dismissed Mr. T. P. Wynne, from service without just cause, and,

(b) Carrier's action in this case is arbitrary, capricious, and unwarranted.

(c) The evidence adduced at the Hearing and Investigation held on March 9, 1970, in the office of Mr. A. J. Wago, Manager, Freight Claims and Prevention, does not, and did not, warrant dismissal from the service of Mr. T. P. Wynne.

(d) The Carrier shall now be required to restore Mr. T. P. Wynne, to service with all rights unimpaired and compensate him for all wage loss from March 3, 1970, when he was suspended from service pending Investigation and Hearing, until restored to service with all rights unimpaired; such rights to include, paid for life insurance, and hospital, medical and surgical insurance for himself and dependents, Travelers Insurance Company.

**OPINION OF BOARD:** The Claimant herein was employed as Investigator in Carrier's Freight Claim Department. On March 3, 1970, he was notified:

"You are hereby suspended from service immediately pending hearing and investigation to determine your responsibility, if any, in connection with unauthorized search of desks and correspondence in the Freight Claims Department Office at Claremont Terminal, Jersey City, N. J., outside of your regular hours, i.e., between 5:00 P. M. and 5:20 P. M., February 25, 1970 and refusing to stop such

search and give the Chief Clerk, who was present in the office at the time, an explanation for making such search and attempting to enter the personal office of the Manager Freight Claims and Prevention.

You will be advised of time and date of hearing and investigation to be conducted in connection with this matter."

On March 4, 1970, Claimant was notified of hearing and investigation to be conducted on March 9, 1970, in connection with the occurrence of February 25th. Investigation was conducted at the time scheduled, and copies of the transcript have been submitted to the Board by both the Petitioner and the Carrier. On March 18, 1970, Claimant was notified of his dismissal from service. Following appeal on the property, the dispute was appealed to this Board by the Petitioner.

The Petitioner has asserted that there were certain discrepancies and omissions in the transcript covering the hearing and investigation. However, there is no proof or evidence of any such discrepancies or omissions and the Board accepts the transcript as submitted.

While there are conflicts in the testimony presented at the investigation, it is well settled that the Board cannot undertake to resolve conflicts. A careful study of the entire transcript is convincing that Claimant did, in the presence of the Chief Clerk, engage in the unauthorized search of desks of other employes and failed to give an explanation as to what he was looking for. There is no evidence, however, that the Chief Clerk instructed the Claimant to stop the search. In fact, the Chief Clerk testified that he did not instruct the Claimant to stop.

Some discipline was warranted, but considering Claimant's years of service with the Carrier of some twenty-seven years, with no record of any prior discipline, permanent dismissal was excessive. We will award that Claimant be restored to service with seniority and other rights unimpaired, but without compensation for time lost while out of service.

In reaching our decision herein, we have considered only the issues raised by the parties in the handling of the dispute on the property. It is so well settled as to require no citation that issues raised for the first time before the Board may not be considered.

**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 discipline imposed was excessive.

**AWARD**

Claim sustained to the extent set forth in the Opinion and Findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST: E. A. Killeen**  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1971.