

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19397  
Docket Number CL-19626

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: {  
    (Brotherhood of Railway, Airline and Steamship Clerks,  
      Freight Handlers, Express and Station Employees  
    (The Union Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7057) that:

(a) The Carrier violated the current Clerks' Agreement when on December 10, 1970, it arbitrarily and capriciously discharged Clerk J. W. Thrower from service of The Union Terminal Company (Dallas) effective December 11, 1970.

(b) Clerk Thrower be reinstated to the service of The Union Terminal Company with all seniority, vacation and other employee rights restored unimpaired.

(c) Clerk Thrower be compensated for a day's pay at the proper rate of pay of Mail Foreman position for December 11, 1970, and each and all subsequent dates he could have worked had he not been arbitrarily and capriciously discharged from the service of The Union Terminal Company (Dallas).

OPINION OF BOARD: On November 30, 1970, Claimant was notified to attend a formal investigation "to develop facts and place responsibility for your alleged failure during your tour of duty November 23 and November 29 to devote your time on duty to the best of your ability as prescribed by Union Terminal General Rule 1, paragraph 3 and Rule 18, paragraph 3. Also, failure to require employees under your supervision to devote their time on duty exclusively to their duties during their tour of duty as required by General Rule 18, paragraph 3 and failure to promptly unload and load mail taking into consideration force allotted to your supervision in compliance with Rule 32." Following the investigation, Claimant was notified that he was found guilty of the above charges and he was dismissed from the Company.

This Board has carefully reviewed the record and finds that none of Claimant's procedural rights under the Agreement were violated in the manner in which he was charged or the investigation and appeal from the decision thereof conducted. There was sufficient evidence adduced at the investigation to support the charges against the Claimant. And it is not within our jurisdiction to substitute our judgment for that of the Company.

However, we are of the opinion that taking into consideration Claimant's twenty-eight years of service and his prior service record that the discipline of dismissal was excessive. Consequently, we hereby order that Claimant be restored to service with the Company with all seniority rights unimpaired but without compensation for time withheld from service. However, in light of the fact that the Company substantiated the charges against him, Claimant is not to be restored to his former position of Mail Foreman in the Mail Department.

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 Employee involved in this dispute are respectively Carrier and Employee 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 but the discipline imposed was excessive.

A W A R D

Claim sustained in part, denied in part per the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of September 1972.