

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19735
Docket Number CL-19945

C. Robert Roadley, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7201)
that:

(1) Carrier violated the Clerks' Agreement when it dismissed Mr. F. W. Clegg on June 15, 1971, for alleged violation of the rules and failure to properly perform his duties as Claim Clerk, Memphis, Tennessee.

(2) That Carrier now be required to reinstate Mr. F. W. Clegg with all his rights, including seniority and vacation rights, unimpaired and he be compensated for all time lost from June 15, 1971.

(3) The Carrier shall be required to pay on the total amount claimed in Item 2 above 1% (one percent) per month as interest commencing June 15, 1971 and compounded monthly until this claim is paid in full.

OPINION OF BOARD: Claimant, employed as Claim Clerk, was charged with having violated his trust as an agent of the Carrier when he consummated an allegedly fraudulent transaction in the marketing of a damaged shipment of oil; and that he gave false reasons for his desire to be off duty on the day of the transaction.

Claimant alleged that he was not given a fair and impartial hearing, that the decision of the Carrier was not sustained by the evidence at the hearing, and that the penalty was unreasonable in light of the facts and circumstances in this case.

A thorough review of the record clearly demonstrates that the investigation was proper and that the hearing was conducted in a fair and impartial manner. Further, the record contains ample probative evidence to support the finding that the actions of the Claimant were substantially violative of his duties and responsibilities as an employee in that he consummated the subject transaction contrary to his authority and in violation to the Carrier's rules and regulations. Additionally, Claimant's statements regarding his reasons for being off duty on the day of the transaction are not supported by the facts as set forth in the record.

Since the record contains substantial evidence that supports the Carrier's decision, that decision cannot properly be disturbed by this Board for the Board reviews discipline cases in an appellate capacity and does not weigh conflicting evidence or attempt to pass on the credibility of witnesses.

In Award No. 16074 (Perelson) we said:

"Numerous prior awards of this Board set forth our function in discipline cases. *****Our function is but to pass upon the question whether, without weighing it, there is substantial evidence in the record to sustain a finding of guilty. Once that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing the penalty imposed unless we can say that it clearly appears from the record that the action of the Carrier with respect thereto was so unjust, unreasonable, or arbitrary as to constitute an abuse of discretion."

This Board has also held on numerous occasions that dismissal from the service of a Carrier for a dishonest act is not an excessive application or an abuse of discretion.

In view of the foregoing we will deny the claim.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *E. A. Killen*
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1973.