

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19759
Docket Number CL-19937

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(J. F. Nash and R. C. Haldeman, Trustees of the Property of
(Lehigh Valley Railroad Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7187)
that:

(a) The Carrier violated the current Agreement between the parties, when after improper hearing and investigation held on June 30, 1971, it held a second Hearing and Investigation on July 6, 1971, and used an incorrect statement obtained at the first hearing by pressure and duress, to dismiss Mrs. Bess C. Albani from service with the Carrier.

(b) Carrier's action in this case was improper, arbitrary, excessive and unwarranted, a misuse of its power, and abuse of an employees rights.

(c) The total evidence adduced at the second Hearing and Investigation, clearly indicated the penalty of dismissal was in error and unwarranted.

(d) The Carrier shall be required to restore Mrs. Albani to service with all rights unimpaired, and to fully compensate her for all wages and other benefits guaranteed under the Agreement, or Agreements, that she lost between June 30, 1971 and the date she is returned to service, as though she had been continuously employed.

OPINION OF BOARD: Claimant, an employee with slightly over three (3) years' service at the time of the incident which lead to her dismissal, was suspended from her position as a Clerk-Stenographer in Carrier's Transportation Department on June 30, 1971. At the time of her suspension, she was charged with the unauthorized reproduction of a twelve-page alphabetical listing of records and files pertinent to the function of the Office of Vice President Operations, and transmittal of said reproduction to an officer of her Union. Investigation was held on July 6, 1971 at which Investigation Carrier found Claimant guilty, and subsequently she was dismissed from any and all service of the Carrier.

A review of the entire record in this case demonstrates that although Claimant did, in fact, admit that she exhibited the file listing to her Union representative, she denies that she did more than that, and denies that she reproduced a copy of the file for her Union representative or that she allowed her copy to be out of her possession long enough for someone else to reproduce same. A copy of the index of records and files subsequently appeared in a Union Brief concerning a different grievance which the Union was processing. As a result, Carrier presumed that Claimant had delivered the records in question to her Union representative.

Claimant's Union denied that Claimant was the source of the Index of records and files. Three affidavits in the record affirmatively state that Claimant was not the source of the material, although the affidavits fail to disclose the source.

At the Investigation and in Briefs, Carrier stresses the confidentiality of the information contained in the document which Claimant exhibited to her Union Representative. However a review of the entire record fails to demonstrate evidence that Carrier considered the document to be in the same confidential status prior to the incident in question. Moreover, there is no evidence of record to show that in the short time Claimant occupied the position of Steno-Clerk in the Transportation Office (approximately 7 months) she was ever instructed that her position and the materials she worked with were of a confidential nature. This factor, plus the foregoing clearly shows that Carrier failed to prove that it was Claimant's copy of the file index which was reproduced, which leads us to conclude that discipline of dismissal for exhibiting a file index to a Union officer is extremely excessive. A reprimand or brief suspension would have been more appropriate under the circumstances.

We will, therefore, order that Claimant be restored to service within thirty (30) days of the date of this Award with seniority and other rights unimpaired, and that the time withheld from service be treated as a suspension. No wage loss will be awarded.

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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1973.