

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19984
Docket Number CL-20206

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((Transportation-Communication Division)
(
(Norfolk and Western Railway Company (Involving employees
(on lines formerly operated by the Wabash Railroad
(Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7334)
that:

1. Claim of the General Committee that the Carrier violated the terms of the Agreement between the parties, when on November 17, 1972, it dismissed N. A. Saylor without just reason or cause; and
2. As a consequence Carrier shall:
 - (a) Clear service record of N. A. Saylor of the charge and any reference in connection therewith.
 - (b) Promptly restore N. A. Saylor to duty with seniority, vacation and other rights unimpaired.
 - (c) Pay N. A. Saylor the amount of wages he would have earned absent the violative act.
 - (d) Pay N. A. Saylor any amount he incurred for medical or surgical expenses for himself or dependents to the extent that such payments would have been paid by Travelers Insurance Company, under Group Policy No. GA-23000, and in the event of the death of N. A. Saylor, pay his estate the amount of life insurance provided for under said policy. In addition, reimburse him for premium payments he may have made in the purchase of substitute health, welfare and life insurance.
 - (e) Pay interest at the statutory rate for the state of Indiana, for any amounts due and withheld as a result of of the Carrier's action in dismissing claimant.

OPINION OF BOARD: Claimant, the regularly assigned Agent, North Liberty, Indiana, was permanently dismissed for the unauthorized removal of three Carrier-owned telephones from Carrier's premises. Claimant had been in Carrier's service for about twenty-nine (29) years when the dismissal occurred.

In protesting the dismissal the Employees assert that: (1) Carrier prejudged claimant's guilt, which served to deny him a fair hearing; (2) it was not claimant's intent to steal the phones and Carrier failed to prove otherwise; and (3) an employee who has twenty-nine years of service, and who is nearing retirement age, should not be permanently dismissed for such a minor infraction.

The claimant was adequately advised of the charges, the hearing was conducted fairly, and nothing in the transcript suggests prejudgment of guilt. Thus, the record contains no due process deficiencies and we find no merit in the Employee's first contention. Also, we find no merit in the contention concerning claimant's intent. The hearing transcript shows that, in an appearance before a Justice of the Peace prior to the herein disciplinary hearing, the claimant plead guilty and was fined \$25 on the charge that he "did...unlawfully steal three telephones from the North Liberty Depot..." No denial or clarification of this guilty plea was entered in claimant's disciplinary hearing and, in addition, claimant gave fresh testimony that he had removed the subject telephones without authority. His explanation was that he intended to repair and return the phones to Carrier's premises. However, the Carrier evidently found this explanation not believable and the record provides no basis for disturbing this finding. Thus, on the whole record, we can but conclude that the findings of guilt are supported by substantial evidence of record. Award 19216 (Edgett). In response to the Employee's contention on the excessive nature of the discipline, the Carrier has called attention to claimant's previous record which reflects two suspensions of thirty (30) days each as well as one dismissal. The dismissal, which occurred on May 7, 1970, gave rise to the following comment in the Award of Public Law Board No. 947 (August 30, 1972):

"A careful reading of the investigation transcript leaves no doubt that the Claimant did not comply with the directions in Bulletin No. 93. All of the time claims involved were received in a group on March 9, 1970. We are not convinced that they were transmitted daily by inter-office dispatching.

There is also evidence that some of the claims for overtime are for dates when no overtime was required. None of the overtime claims are supported by authorizations from the Carrier. From all of the evidence in the record, it is fair to conclude that the Claimant was guilty of the preferred charges."

Despite the above findings the claimant was restored to service with seniority **unimpaired by PL Board Award No. 947**; yet, he had been in service less than thirty (30) days when the incident involved in this dispute occurred. In view of the claimant's previous record, and the lack of mitigating circumstances regarding the instant infraction, there is no basis for disturbing the herein discipline as excessive and unduly severe. The claimant's long service and retirement situation, albeit compelling, do not stand alone on the question of excessive discipline.

In light of the foregoing, and on the whole record, we shall 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 12th day of October 1973.