

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20003
Docket Number CLX-20288

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(REA Express, Inc.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood (Case No. 124) that;

(1) The Agreement governing hours of service and working conditions between the parties, effective January 1, 1967, was violated by the Agency at Miami, Florida, when on May 25, 1971, employee T. C. Hayden was notified by Terminal Manager J. A. Jackson that he was dismissed from service effective May 25 as a result of the investigation held on May 19, 1971, being specifically charged with, "falsification of Company records, deliberately increasing charges to our customers over that shown on your manifest and wilfully converting this overcharge to your personal use, such improper handling occurred on May 12, 1971, when you operated route 88", and;

(2) That Mr. Hayden shall be restored to service with seniority rights unimpaired, his record shall be cleared of the charges and he shall be compensated for all monetary loss of pay retroactive to May 25 and continuing thereafter until such time as he is restored to service with seniority rights unimpaired and his record cleared of the charges, and;

(3) Mr. Hayden shall be additionally compensated for any overtime which he would have received and any expense incurred by him due to the Agency cancelling health and welfare insurance policy with Blue Cross-Blue Shield Insurance Company, and he having to assume premium payments.

OPINION OF BOARD: Claimant, with seniority date of November 1957, was a regularly assigned vehicleman when he was dismissed, effective May 25, 1971, after hearing and findings of guilt on charges of falsifying company records, in that he deliberately increased by \$1.00 the amount on a customer's manifest.

Carrier's position is that permanent dismissal was reasonable discipline in the circumstances, but Petitioner protests the discipline on the following grounds;

1. Mr. T. C. Hayden did not receive a fair and impartial hearing as contemplated by Rule 11.
2. Charges were compounded.
3. Agency's actions were arbitrary and capricious in assessing discipline.

4. Agency's assessment of discipline was too severe.

The record contains no due process deficiencies to support contentions 1 and 2 above and, thus, we shall proceed to a review of the whole record with respect to the remaining contentions.

The Claimant's response to the charges is reflected in the following brief extract from the hearing record:

"JAJ: Mr. Hayden, is the amount of the due bill the same as that shown on the delivery manifest?

TCH: No sir, it is not. The reason it is not is because I re-added and made an error and I did not take the dollar home; in fact, when I made my settlement I was \$3.00 short, which I borrowed from Mr. Thompson.

JAJ: Now, I am going to ask my question again; is the amount of the due bill the same as shown on the manifest?

TCH: No sir, it is not.

JAJ: Mr. Hayden will you compare the time shown on the due bill with the time shown on the delivery manifest?

TCH: There is a ten minute discrepancy.

JAJ: Can you explain to me why this due bill signed by the same person indicates it was signed for 10 minutes later than the manifest?

TCH: No sir, I cannot.

JAJ: Can you explain why you indicate settlement of a due bill in the amount of \$17.41 when you were only charged out with one shipment for a due bill customer in amount \$16.41?

TCH: When I re-added it I forgot to change it on my manifest.

JAJ: Mr. Hayden, are you in the habit of making changes in documents charged to you without approval of a supervisor?

TCH: I wouldn't think so sir, but I forgot to change it on here."

In determining the herein discipline, the claimant's prior record, which involved 40 demerits, was considered by Carrier. We note here that Carrier's demerit policy results in automatic dismissal upon receipt of 60 demerits, but that dishonesty, incompetence, and making false reports and statements may result in immediate dismissal irrespective of the number of demerits.

In the light of the foregoing, and on the whole record, we believe there is no basis for disturbing Carrier's discipline. The Claimant admitted that he increased the amount of money owed by a customer to Carrier, as reflected on the manifest, and gave an arithmetical error as the reason therefor. However, this kind of error should have resulted in a cash surplus at settlement of the day's transactions, whereas just the opposite, a cash shortage, was the actual result. The arithmetical-error explanation raised a credibility issue, which Carrier resolved against Claimant and we find no basis for disturbing that determination. Also, under prior Board rulings, there is no doubt that it was proper for Carrier to consider Claimant's prior record in determining the quantum of discipline. As to mitigating circumstances, we find none. Claimant was already in jeopardy under Carrier's demerit system, because of the 40 demerits outstanding against him. Yet, by his general conduct, particularly by not reporting the altered manifest to supervision, he invited Carrier to believe the worst and we cannot conclude on the instant record that Carrier's action was arbitrary or unreasonable. Consequently, in all the circumstances reflected by the record, we conclude that the findings of guilt are supported by substantial evidence and that there is no basis on which the discipline could be said to be excessive. 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 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Parker*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1973.