

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20031  
Docket Number CL-20217

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks  
( Freight Handlers, Express and Station Employees  
(  
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7285) that:

(1) Carrier violated the rules of the Clerks' Agreement when it dismissed J. H. Hall from the service of the Company on January 23, 1970.

(2) Mr. J. H. Hall, shall be paid one day's pay (at rate attached to position of Baggage and Mail Porter) for January 23, 1970 and each subsequent date, 5 days per week, until he is restored to service of Carrier with all rights unimpaired.

OPINION OF BOARD: Carrier dismissed Claimant from its service on January 3, 1970 after a hearing into charges contained in a notice under date of December 26, 1969 from Carrier to Claimant which read as follows:

"You are hereby notified, in accordance with the rules of wage agreement under which you are working, to report at Trainmaster's Office, Grafton, W. Va., at 10:00 A.M., on January 2, 1970, for hearing on the following matter: Receiving and cashing pay draft of B & M Porter J. A. Lewis on December 19, 1969."

The basic facts out of which the claim grew are not in dispute. Claimant, a Baggage and Mail Porter with 29 years service, was on December 19, 1969 erroneously issued a pay draft rightfully belonging to a fellow employee, one John A. Lewis. Upon learning of the error, Claimant as holder of the check nonetheless wrongfully endorsed the name of payee John A. Lewis to the back of the instrument, passed it to the Strand Pool Room and retained the proceeds.

Petitioner bottoms its submission on behalf of Claimant on the proposition that the discipline meted out by Carrier, in the circumstances of this case and in light of Claimant's length of service, is so excessive as to be arbitrary or incommensurate with the offense. Upon a careful review of the record, we must conclude that ample competent evidence was addressed at the hearing and investigation to support the charges. Moreover, these acts do constitute sufficiently serious violations to warrant discipline. While discharge of an employee with a long service record is a severe penalty, it cannot be said on the basis of this record to exceed the considerable latitude granted to Carrier in these matters of discipline. See Awards 891 (Garrison), 1310 (Wolfe), 8711 (Weston) 11009 (Boyd) 11017 (Dolnick).

In reaching this conclusion we are not insensitive to the decisions of this Board wherein discipline assessed by a Carrier has been modified. See Awards 18106 (Quinn), 19488 (Brent), 19807 (Blackwell). Careful reflection, however, reveals that in these matters we were in the main so compelled by evidentiary deficiencies, procedural irregularities prejudicial to a fair hearing, or the firm belief that the action taken was so harsh as to be unconscionable in the circumstances under consideration. See Award 2621 (Parker). We are unable to so conclude on this record and, accordingly, the claim must be denied.

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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1973.