

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20034
Docket Number CLX-20294

Dana E. Eischen, 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. 181) that:

1. The Agreement between the parties was violated when Miss Mary Milcic was dismissed from the service of REA Express, Inc. on July 2, 1971 without just cause.

2. REA Express shall reinstate Miss Milcic to service with full seniority rights and benefits.

3. REA Express shall, commencing July 2, 1971, compensate Miss Milcic for all salary, overtime and any other benefits lost as a result of her wrongful dismissal.

4. REA Express shall pay Miss Milcic interest at the statutory rate for the state of Illinois for any amounts due under (3) hereof.

OPINION OF BOARD: The instant matter comes on for decision by this Board as one of several cases transferred by joint agreement of the Company and Petitioner from the roster of cases pending before Special Board of Adjustment No. 752. Under the terms of this transfer arrangement, the said cases were forwarded as joint submissions in which both parties waived any further rebuttal or oral argument before our Board.

Claimant Mary Milcic was dismissed from the service of the Company effective July 2, 1971 for having acquired more than the maximum (60) number of demerits permitted under the Company's Demerit System of Discipline. The proximate cause of this overage of demerits was the assessment of 20 demerits against Claimant's record (which already contained 55 demerits) following an investigation and hearing into charges by the Company contained in a letter to Claimant dated June 24, 1971 which reads in pertinent part as follows:

"You are charged with violation of that portion of Rule 59 of the General Rules and Instructions reading as follows:

"Employees must not absent themselves from work or leave their assigned duties during their tour of duty without permission."

"Specifically, during your regular tour of duty on June 18, 1971, you left your assigned working area and duties without permission. At approximately 9:45 A.M., you were observed outside the building on the public streets at the Northwest corner of West Harrison and South Clinton Streets."

Claimant's regular work assignment was Clerk in the Bond Department, with hours of work between 8:10 A.M. and 4:40 P.M. Included in these hours are a lunch period and two coffee breaks. Claimant's morning coffee break was from 10:00 A.M. to 10:15 A.M. The charges against Claimant grow out of the allegations by two supervisors of the Company, one the Assistant Manager of the Bond Department, that they observed her outside the building at approximately 9:45 A.M. on the morning of June 18, 1971.

At the hearing, Claimant offered in defense testimony by herself and another witness that she had been outside the building between 10:00 A.M. and 10:15 A.M. on the morning in question. Despite the confusion engendered in the record by this evidence, there is no conflict between this testimony and that offered by the Company in support of the charge. Moreover, even if such a conflict appeared in the testimony, our role at this appellate level is not to pass on credibility nor to weigh evidence. Rather our function in discipline cases is to pass upon the question whether there is substantial evidence to sustain the imposition of discipline. (See Award 5032, quoted with approval in 16168). Our review of this record indicates such substantial evidence to sustain the charge against Claimant.

Finally, Petitioner urges that assessment of 20 demerits resulting in dismissal was not proper discipline and excessive in this case. On this point, we must defer to the long line of awards by this Board, typified by Award No. 14601 (Ives) wherein we said:

"*** In accordance with the broad latitude given Carriers by this Board in matters of assessing discipline, we will not upset the punishment decided upon by the Carrier, even though the sanction chosen may be greater than that which the Board might choose. (Awards 14272, 11009, 9422)."

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.

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.