

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20174
Docket Number CL-20200

Dana E. Eischen, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7277) that:

1. The Western Pacific Railroad Company violated the current Clerks' Agreement when on December 31, 1971 it arbitrarily dismissed employee E. M. Castle from service; and,

2. The Western Pacific Railroad Company shall now be required to allow Mr. E. M. Castle eight hours' pay for each date held out of service up to but not including April 10, 1972, the date he was reinstated to service.

OPINION OF BOARD: This is a disciplinary discharge case wherein Claimant, E. M. Castle was dismissed from the service of Carrier on December 31, 1971, following appropriate investigation into charges of absentsing himself from duty without proper authority on December 13, 1971 and engaging in outside employment during the assigned hours of his regular assignment. The instant claim is based on the theory that Carrier's decision was not supported by any probative evidence and was therefore arbitrary.

Claimant was a regularly assigned Train Desk Clerk, Sacramento Freight Office with hours from 3:00 p.m. to 11:00 p.m., Monday through Friday. Evidence was adduced at the investigative hearing that Claimant laid off on account of illness on Thursday December 9, 1971. Two officials of Carrier testified that on Monday December 13, 1971, at 4:00 p.m., they observed Claimant as he operated a machine shop business which he owned. Moreover, Claimant stated on the record that he had supervised work in his shop from time to time on December 13, 1971 while on sick leave from the Carrier.

From essentially the foregoing evidence, Carrier concluded that Claimant had been absent without proper authority and had engaged in outside employment during the assigned hours of his regular assignment. We find substantial evidence in the record to support Carrier's decision and assessment of discipline and, therefore, we shall not disturb Carrier's action. See Awards 16189, 17157, 17914, 18550, 18784, 19216, 19763, and others.

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;

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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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1974.