

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20351
Docket Number CL-20545

David P. Twomey, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and Station
(Employees

PARTIES TO DISPUTE:

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(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the Burlington Northern System Board of Adjustment (GL-7481) that the Carrier:

1. Violated the rules of the March 3, 1970 Rules Agreement by discharging Mr. Mark E. Lammiman, Accountant, Customer Accounting Center, Seattle, Washington, from the service of the Railway Company, effective December 7, 1972.

2. Shall now reinstate Mr. Mark E. Lammiman to the service of the Railway Company with all rights unimpaired, clearing his record, compensating him for all wages lost plus six percent interest compounded daily and recovery of any loss suffered as a result of the termination of his coverage under Group Policy GA-23000 in accordance with its terms.

OPINION OF BOARD: Claimant was dismissed from service, after two separate investigations were conducted by the Carrier on November 21, 1972. The first investigation dealt with the alleged use by Claimant, on June 2, 1972, of Carrier's postage for a personal piece of mail addressed to another Carrier employee at another Carrier business address. The second investigation involved alleged abusive and insubordinate conduct on the part of the Claimant on September 22, 1972.

Concerning the first investigation, the Organization contends that the Claimant was formally charged under procedural Rule 56(A) on July 14, 1972. Rule 56(A) states in pertinent part:

"... The investigation shall be held within seven (7) calendar days of the date when charged with the offense or held from service...."

The Organization argues that the investigation should have been held within the prescribed seven days as provided for in this rule; and having failed to do so, the Carrier was precluded from holding an investigation on the same charge on the November 21, 1972 date.

The record shows that an attempt by the Carrier to serve proper notice on the Claimant was unsuccessful on the July 14, 1972 date, because the Claimant was not at his residence and was on a 90 day leave of absence. The Carrier's Service of Notice on the Claimant on November 16, 1972, conforms to the requirements of Rule 56(A). The investigation of November 21, 1972 took place within the seven day limit of Rule 56(A). Rule 56 contains no limitation on the Carrier concerning a time restriction under which the Carrier must call for an investigation after receiving knowledge of an alleged violation of rules.

Concerning the substantive charges of the first investigation, that of one incident of use of Carrier postage for personal use, it is abundantly clear that Carrier has supported its finding of Claimant's guilt with substantial evidence.

Concerning the second investigation, dealing with alleged use of abusive language and insubordination, the Organization contends that the investigation was improper because the charges made in the notice of investigation were known to the Carrier on September 22, 1972; and if an investigation was to be held, it should have been held seven days from the date Claimant returned to work after his leave of absence. As previously stated, Rule 56(A) places no such time restriction on the Carrier to initiate an investigation.

There can be no doubt but that Carrier, in regard to the matters in the second investigation, has supported its charges with clear and substantial evidence. However, under all the unique facts and circumstances of this entire record, including the transcripts of both investigations, the Board is of the view that a permanent dismissal from Carrier's service was not warranted in this case and is excessive.

Based on the entire record the Board finds:

- (1) That discipline was warranted; and
- (2) That permanent dismissal was excessive.

The Board awards that the Claimant shall be restored to Carrier's Service with seniority and other rights unimpaired, but without pay for lost time. There is no agreement support for Claimant's claim for interest or recovery for loss suffered by termination of his Group Policy GA23000 coverage.

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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.