

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20673
Docket Number CL-20784

William M. Edgett, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
(Jacksonville Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7572) that:

(1) The Carrier violated the agreement on or about May 22, 1973 when it dismissed from its service Sinclair Wilcox.

(2) The Carrier shall now reinstate claimant to the service and compensate him for all wage loss less any compensation earned in other employment.

OPINION OF BOARD: The record shows that claimant was employed in Carrier's Baggage and Mail Department on March 26, 1957. On April 18, 1973, he was notified by Carrier's General Baggage and Mail Agent:

"You are hereby instructed to be in my office at 1:00 p.m. Monday, April 23, 1973, for formal investigation wherein you are charged with incompetence; upon the allegations that, (1) you were absent from your duties from 11:45 a.m. to 12:25 p.m. on April 11, 1973; (2) you misloaded 15 sacks of West Palm Beach first class mail and 5 sacks of Ft. Lauderdale mail in the 6:15 p.m. West Palm Beach truck on April 11, 1973; (3) you had a concealed weapon (pistol) in your possession while on the property of the Jacksonville Terminal Company on April 16, 1973 in violation of rules, and the instructions of Baggage and Mail General Foreman B. H. Lawson, Jr.

"If the facts developed in this investigation should sustain the charge against you, you will be subject to discipline."

The investigation was conducted on April 23, 1973, as scheduled. Claimant was present at the investigation, acted as his own representative and was assisted by the Assistant General Chairman. A transcript of the investigation has been made part of the record before the Board.

A review of the entire record, including the transcript of the investigation, shows that none of claimant's substantive procedural rights were violated. The objection raised in the investigation that the

investigation could not be fair and impartial because the same officer who preferred the charges was the conducting officer is without validity. The official conducting the investigation did not offer testimony. See Awards 8179, 9322, 10355, 14573, 16268 and others. The record is convincing that the hearing was conducted without bias. The claimant and his representative were given the opportunity to and did engage in extensive questioning of witnesses.

There was substantial evidence in the investigation to show that claimant was absent from his duties for about 40 minutes on April 11, 1973; that he failed to properly load mail that he was assigned to handle on April 11, 1973; that he had a pistol on Carrier's property on April 16, 1973; and that he had previously been cautioned that it was against the Carrier's rules to bring weapons on the property. Claimant denied all the charges, and while he alleged there was some conspiracy and tampering with the mail, there was no evidence to support such allegation.

It is well established by decisions of this Board that the Board will not attempt to weigh the evidence adduced at investigations nor resolve conflicts therein. We will not disturb Carrier's decision where it is supported by substantive evidence and not arbitrary or capricious. While the charges of being absent from his duties about 40 minutes and the misloading of the mail may not in themselves justify dismissal, these along with the serious charge of having a concealed weapon in his possession while on the property of the Carrier in violation of rules, after having previously been cautioned, justified the Carrier's action. The fact that claimant may have had a permit to carry a concealed weapon as a detective in the City of Jacksonville, did not give him a license to violate Carrier's rules while on the Carrier's property.

The claim will be denied in its entirety.

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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1975.