

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20918
Docket Number CL-20846

Louis Norris, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and Station
(Employees
PARTIES TO DISPUTE: (
(Robert W. Blanchette, Richard C. Bond, and
(John H. McArthur, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7575) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on K. J. Strattman, Clerk-Timekeeper at Selkirk Yard, Albany, N.Y., in the Carrier's Northeast Region.

(b) Claimant K. J. Strattman's record be cleared of the charges brought against him on February 24, 1973.

(c) Claimant K. J. Strattman be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: As of February, 1973, Claimant was the regular Timekeeper at Selkirk Yard, with over 32 years of service with Carrier. At that time, he had been employed as Timekeeper for the past 10 years. On March 30, 1973, he was dismissed from service pursuant to formal investigation held on March 22, 1973; the charge was falsification of his time records "in order to illegally obtain funds not due" for certain specified dates in February, 1973.

Petitioner contends that Claimant was not guilty of the charge, that he was not afforded a fair and impartial hearing, and that the discipline imposed was unwarranted, particularly in view of Claimant's 32 years of service. The relief demanded is set forth in the Statement of Claim

Initially, Petitioner asserts that Claimant's dismissal was improper since it was based on the charge that "... as a result of said falsification, you illegally received a remuneration for service not rendered this Company."; whereas, the charge proper was for falsification "in order to illegally obtain funds not due".

Carrier counters that this issue represents "new matter" not raised on the property and therefore inadmissible at this stage of the appellate process.

We sustain Carrier's objection on the issue of "new matter", based on established principle as set forth in a host of precedents to that effect. See Awards 18122 (Dorsey), 18347 (Dugan), 18545 (Devine) and 19832 (Sickles), among many others. Additionally, we find no substantial difference between the language in the charge and the language in the dismissal letter. If Claimant received remuneration "for service not rendered", then obviously he obtained "funds not due", particularly since, as Timekeeper, he prepared and approved his own time cards.

Nor does Award 16154 (Ives), cited by Petitioner, hold to the contrary. In that Award, the original charge was based on July dates; but the discipline imposed made no reference to July and related solely to "specified dates in August and September 1964". Factually, that is a far cry from the confronting facts in the instant dispute.

On the issue of "fair and impartial hearing", we have carefully reviewed the transcript of the investigation, on the basis of which we are unable to sustain Petitioner's objection. Claimant was afforded every opportunity to present his version of the facts, he was vigorously represented by the Organization with ample opportunity for cross-examination of adverse witnesses, and the entire hearing was conducted properly and fairly in accordance with the Rules and without any denial of Claimant's rights of due process.

On the merits, therefore, and based on our analysis of all the testimony and particularly the testimony and admissions of Claimant, we are compelled to the conclusion that Claimant was properly found guilty of the charge of falsifying his own time records "in order to illegally obtain funds not due". Stripped of all but the basic facts, the evidence is amply clear that Claimant came in early when he wanted to, left early when he wanted to, allegedly took time records home when he wanted to and without any authorization, and recorded his claimed straight time and overtime hours as he wanted to and in such amounts as he alone determined. Furthermore, as Timekeeper, he knew full well that solely on the basis of his signature on his time cards the Payroll Department would make payment for the time recorded by him on the dates in question.

In view of Claimant's 32 years of service and his specialized knowledge and experience gained in his 10 years of service as Timekeeper, such flagrant violation of the Rules is well nigh incredible and bespeaks palpable fraud. Indeed, it was Claimant's responsibility as Timekeeper to scrutinize and reject, certainly to report,

similar claims and practices of other employes, if asserted. In view of these circumstances, the various "explanations" offered by Claimant cannot be given credence.

"The principle has been well established that we will not disturb Carrier's decision on guilt or the discipline imposed where it is supported by substantial probative evidence and Carrier has not acted arbitrarily, unreasonably or contrary to due process. See Awards 3149 (Carter), 9422 (Bernstein), 10429 (Rock), 13674 (Weston), 15566 (Lynch), 19216 (Edgett) and 20189 (Sickles), among many others." See Award 20868 (Norris).

Petitioner contends, however, that these acts and procedures of Claimant, on which the charge is based, were in fact pursued by him for a period of at least six months, and this, it is asserted, constituted knowledge, acquiescence and condonation by Carrier. The record, however, speaks to the contrary for there is no such testimony or evidence before us.

"Conversely, it appears that such practice went undetected; but this is hardly sufficient to establish knowledge, approval or condonation by Carrier or justify its repetition". See Award 20865 (Norris), among others.

We take note of Petitioner's further contention that the Investigation Officer "did not render the decision on the investigation"; however, such contention is not borne out by the record. Carrier states that following the investigation the investigating officer reviewed the record, concluded that Claimant was guilty, that disciplinary action was warranted and communicated his findings to Mr. Dougherty, Assistant Superintendent. This is not disputed by Petitioner. However, in the follow-up decision rendered by Mr. Dougherty, he used the phrase "I hereby conclude . . ." On this basis, Petitioner contends that Mr. Dougherty rendered the decision, not the investigating officer. There is nothing in the record to support such contention.

Accordingly, Awards 17901, 13240, 17156 and 14267, cited by Petitioner, are not germane. Additionally, we are constrained to point out that there is no Rule in the Agreement that requires the Investigating Officer to render the decision, particularly where, as here, the basic facts are conceded in the testimony of Claimant. Moreover, the overwhelming weight of authority in prior Awards of this Board is contrary to the contention of Petitioner.

See Awards 9102 (Stone), 9819 (McMahon), 12001 (Dolnick) and 16347 (Devine), among many others.

We are aware of Claimant's record of 32 years of service with Carrier. Nevertheless, we are unable to conclude in the controlling circumstances of this case that Carrier's imposition of the discipline of dismissal was unwarranted, or that it was unreasonable, arbitrary or capricious.

"This Board has held on numerous occasions that dismissal from service for dishonest acts is not an excessive application of discipline or an abuse of discretion". See Award 16168 (Perelson).

See also Awards 8808 (Bailer), 11278 (Stark), 13674 (Weston), 16888 (Goodman), 17243 (Yagoda), 18708 (Franden), 20603 (Lieberman), 20663 (Twomey) and 20868 (Norris), among many others.

On the basis of the record and controlling authority, therefore, we are compelled to deny this claim.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

G.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1976.