

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21118  
Docket Number CL-21136

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: ( Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employes  
(  
( Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
GL-7762, that:

1. Carrier violated the Agreement between the parties when on July 10, 1974, they arbitrarily and capriciously dismissed Clerk E. J. Sundermeier.
2. The Carrier's action was unjust, unreasonable and an abuse of Carrier's discretion.
3. Carrier shall now reinstate E. J. Sundermeier with all rights and privileges unimpaired and pay him for all time lost, including time spent attending the hearing.
4. In addition to money amounts claimed herein, Carrier shall pay claimant an additional amount of ten (10%) percent interest compounded daily.

OPINION OF BOARD: This is a disciplinary dispute in which Claimant was dismissed. The charge against Claimant was phrased as follows:

"You are hereby charged with insubordination by your failure to protect your regular assignment, No. 6 bill clerk position, Homestead Yard, Friday, June 28, 1974, on duty 9:30 A.M."

Petitioner initially objects to the investigation on the grounds that the charge was imprecise and not specific. We find no merit in that contention. The charge gave Claimant notice that a particular incident was to be investigated and was certainly adequate enough to enable him to prepare his defense; it was not a "fishing expedition" as argued by the Organization. Petitioner's right to due process was not impaired in any respect by the language of the charge (see Awards 20428, 20603, 20670, 19475 among many others). A number of other procedural arguments were raised by Petitioner, none of which are supported by the record of the investigation, or the rules.

Petitioner also objects to the consideration of Claimant's prior record and its inclusion in Carrier's submission, as "new evidence". It is

noted that the question of Claimant's prior record was raised in correspondence during the handling on the property. In addition, it is well established that an employe's records may be considered by Carrier in determining the appropriate penalty in a discipline case; it is only in the determination of guilt or innocence that the prior record must not be considered.

The record of the investigation contains substantial evidence to support Carrier's conclusion that Claimant was guilty of the charge against him. It is quite clear that we cannot substitute our judgment for that of Carrier. As for the penalty of dismissal, we have no basis for questioning Carrier's decision, particularly in the light of Claimant's prior record: there was nothing arbitrary, unreasonable or capricious in the penalty determination.

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 Employe involved in this dispute are respectively Carrier and Employe 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:

  
Executive Secretary

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