

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21137  
Docket Number CL-21259

Walter C. Wallace, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7932) that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it dismissed Mr. F. O. Booher from service following investigation at which charges of violation of its Rules 801, 804, 810 and G were not convincingly proved; and

(b) The Southern Pacific Transportation Company shall now be required to reinstate Mr. Booher to service and compensate him for eight hours at the rate of Bill Clerk Position No. 41 May 11, 1974 and each date thereafter until restored to service with seniority rights unimpaired, plus insurance, hospitalization and all other emoluments provided in the Agreement.

OPINION OF BOARD: The claimant, F. O. Booher, entered the Carrier's service on February 6, 1967 as a clerk on the San Joaquin Division. On June 12, 1974 he was dismissed from the service of the Carrier.

On May 9 and 10, 1974, claimant was working as Bill Clerk assigned at the station of Stockton, California, 4:30 pm to 12:30 am. His position required him to travel from Stockton to Lodi in a vehicle provided by Carrier via direct route to perform station clerical duties. Upon completion of these duties, he was required to return directly to his headquarters at Stockton and perform clerical duties as instructed. Over a period of time prior to May 9 and 10, 1974, claimant's work was not being done and his supervisor periodically called the station of Lodi during the hours claimant would logically be there. Obtaining no response he placed claimant under surveillance to monitor his activities. Carrier alleges that during his shifts on May 9 and 10, 1974, claimant was engaging in other activities not connected with his duties.

As a result of his actions on the dates involved, claimant was cited for formal investigation:

- "(1) in connection with his allegedly absenting himself from the position which he was assigned between 8:30 pm and 11:55 pm, May 9, 1974, and between 9:15 pm and 10:35 pm, May 10, 1974;
- (2) using company vehicles during the above mentioned times for unauthorized travel with unauthorized passengers to Oakdale on May 9, and a rural area east of Stockton on May 10, remote from his assigned duties;
- (3) allegedly engaging in unauthorized personal business at Oakdale during his tour of duty on May 9 and in the vicinity of Stockton on May 10 during the above mentioned hours;
- (4) allegedly using and being in possession of alcoholic beverages while on duty at 10:35 pm on May 10, 1974."

In this connection claimant was charged with violating the following rules which read in pertinent part as follows:

"Rule 801

Employees will not be retained in service who are...indifferent to duty,....dishonest....or who conduct themselves in a manner which would subject the railroad to criticism.

Rule 804

Any act of....misconduct or willful disregard or negligence affecting the interests of the Company will not be condoned and must be reported.

Rule 810

Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority. They must not engage in other business without permission of the proper officer.

Rule G

The use of alcoholic beverages, intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited."

On the basis of evidence adduced at the formal investigation held with claimant on June 4, 1974, claimant was dismissed from service by letter dated June 12, 1974 from Carrier's Superintendent for violating the above rules.

At the Board level Carrier introduced certain evidentiary matter concerning claimant's misconduct and failure to follow instructions during his seven years of service prior to these charges. Although no objection was made on behalf of the claimant and a contrary assertion was made, we question whether this evidence is properly before this Board for consideration. Our search of the transcript of the investigation fails to disclose such evidence. In fact, claimant's testimony at the hearing seems to contradict this view. Evidence that is not part of the record established on the property cannot be a basis for consideration by this Board as a matter of jurisdiction. Similarly, we believe the claimant's contentions related to the fairness or unfairness of the hearing may be subject to the same objection. Nevertheless, we conclude the hearing afforded claimant on the property was fair, thorough and impartial. The exchanges between the presiding officer and claimant's representative were spirited, but hardly a basis for raising any question related to fairness.

With respect to the evidence, it is not this Board's function to substitute its judgment for that of the trier of facts when there is substantial evidence in the record which supports the conclusions reached. Here the testimony of Carrier witnesses Brent, Branum, Henry and Dixon satisfied this requirement. The offenses charged are serious ones and, in accordance with the decisions of this Division, are a basis for dismissal. Absent a finding that Carrier's actions were arbitrary, capricious or discriminatory, we cannot disturb the decision reached or the penalty assessed here.

**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. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1976.