

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21234
Docket Number CL-21040

Joseph A. Sickles, 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-7753) that:

1. Carrier violated the Agreement between the parties when on June 27, 1974, they arbitrarily and capriciously dismissed Clerk G. G. Karamanos.

2. The Carrier's action was unjust, unreasonable and an abuse of Carrier's discretion. The discipline was assessed even after the charges were shown to be completely erroneous and unsubstantiated.

3. Carrier shall now reinstate G. G. Karamanos with all rights and privileges unimpaired and pay him for all time lost, including time spent attending the hearing.

4. In addition to the money amounts claimed herein, Carrier shall pay claimant an additional amount of ten percent (10%) interest compounded daily.

OPINION OF BOARD: On May 20, 1974, Claimant was notified of a hearing concerning:

"You are hereby notified to present yourself at a formal hearing in the Office of the Assistant Superintendent, Bison Yard, at 9:30 A.M., Friday, May 24, 1974, to develop the facts and determine your responsibility, if any, for conducting yourself in a manner unbecoming an employee of the Norfolk and Western Railway Company in connection with your being found guilty in Erie County Court on May 10, 1974 of official misconduct resulting from being indicted on charges of bribe receiving, receiving a reward for official misconduct and third degree larceny in addition to misconduct." (Attachment "A").

Subsequent to hearing, Claimant was dismissed from service.

It appears that, in addition to his employment with Carrier, Claimant was employed by the Erie County Department of Social Services,

and the termination in dispute stems from certain criminal accusations against him concerning that governmental employment.

The Organization contends that the charges were not specific. We disagree.

We are aware of the line of Awards cited by the Organization which state that an employee must be advised of the nature of the allegation against him. But, the May 20, 1974 letter clearly does so. The conduct which was assertedly unbecoming an employee was "...being found guilty...on May 10, 1974 of official misconduct..." The particulars of the indictment were not set forth, but the employee was not charged, by Carrier, with having received a bribe or reward or having committed third degree larceny.

Other asserted errors, such as inability to face the accuser, etc., are considered in our discussion of the case, below.

The case presented against the accused, at the investigation, consisted of five (5) newspaper articles. An August 7, 1973 item identified Claimant by name and address and noted his plea of innocent. An item which appeared two (2) days later stated that Claimant had been suspended from his government job. An October 24, 1973 item stated that he had been indicted and a May 11, 1974 item demonstrated a plea of guilty to the misdemeanor of "official misconduct". It was not until June 1, 1974 that the newspaper identified Claimant as an employee of Carrier, in an article dealing with the sentence imposed.

To be sure, the various newspaper articles made reference to the substantive charges against Claimant, but no proof on the specific allegations was presented at the investigation, nor does the record show the extent of the facts surrounding the less serious misdemeanor to which the employee pleaded guilty.

This Board clearly recognizes that we do not substitute our judgment for that of Carrier where there is substantial evidence in the record to support the Carrier. But, we do possess the authority to assure that substantial evidence is contained therein.

We feel that a newspaper article is a sufficient basis for a prima facie showing that an employee has been found guilty of a criminal offense. Although rebuttal evidence is permissible to demonstrate to the contrary, no such evidence has been presented here. Thus, we feel that the newspaper articles, standing alone, substantiate that Claimant was found guilty of official misconduct which resulted from having been indicted on certain named charges.

But, we do not feel that the newspaper articles, standing alone, constitute substantive proof of the particulars of the asserted misconduct. The experiences of all of us have shown that media accounts are dictated by journalistic premises and do not always convey precise information which may be relied upon for all purposes. This may even be a more significant consideration when the publication quotes others who, themselves, are engaged in advocate proceedings.

Surely, as noted in Award 19486, a Carrier is not required to retain employees who are dishonest or bring discredit to the Carrier, and clearly conduct away from Carrier-related duties can be the basis for disciplinary action. The fact that the newspaper did not name Claimant as a Carrier employee until after the charges were preferred could have a bearing in some instances, but is not fatal to this charge of unbecoming conduct.

However, as noted above, we limit our findings to the fact that the record supports a conclusion that Claimant was found guilty of a misdemeanor charge. We do not feel that the record shows, with any degree of clarity, the precise conduct involved. While we may speculate as to those matters, we may not substitute speculation for proof.

Although disciplinary action was permissible, we do not have before us sufficient evidence to determine if the record supports a conclusion that permanent termination was an abuse of discretion. Accordingly, we will restore Claimant to duty, with seniority and other rights unimpaired, but without compensation for any wages lost. No compensation is awarded for time spent attending the hearing. The claim for interest is moot.

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 violated.

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Claim sustained to the extent that Claimant shall be restored to service with seniority and other rights unimpaired, but without compensation for any wages lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September 1976.