

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21345
Docket Number CL-21526

William G. Caples, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
{ Steamship Clerks, Freight Handlers,
{ Express and Station Employees
(Chicago, Rock Island and Pacific Railroad Company
(William M. Gibbons, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8031, that:

1. The Agreement governing the hours of service and working conditions between the parties was violated by the Carrier, especially Rules 43 and 44 at Chicago, Illinois on January 4, 1974, in the treatment accorded Clerks M. C. Rogulich and G. E. Gustafson in dismissing them from service, and

2. Clerks M. C. Rogulich and G. E. Gustafson were not guilty and were not proven guilty of alleged violation of Carrier Rules (b), (d) and (n) of their G-147 revised, about 7:45 A.M., December 28, 1973, and

3. That M. C. Rogulich and G. E. Gustafson shall be restored to service with all rights unimpaired and compensated for all monetary loss sustained beginning January 4, 1974, and subsequent thereto until restored to service.

OPINION OF BOARD: This is a discipline case involving two clerks who were dismissed January 4, 1974, following investigation, one for permitting an unauthorized person to use his commuter pass and the other for being in the company of the unauthorized user of the pass without reporting the fraudulent use thereof.

Using a pass illegally or obtaining one by falsehood are serious offenses which could under certain circumstances be sufficient cause for permanent dismissal. The failure to report improper use of a pass is also an offense which warrants discipline. Recognizing this the Board cannot interfere with the judgment of the Carrier in assessing discipline unless the discipline is arbitrary or unreasonable in amount. The record shows that the Carrier after consideration of the record and the fact that both Claimants had five (5) years of service, offered reinstatement on a leniency basis to both. It is the opinion of the Board that the purpose of the discipline assessed against each Claimant has been accomplished and they should be given reinstatement within 45 days of the date of this order on a leniency basis, with seniority rights and vacation rights unimpaired, without pay for time lost while out of service.

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

The discipline was not excessive.

A W A R D

Claimants be offered within forty-five (45) days of the date of this order reinstatement, with seniority rights and vacation rights unimpaired, without pay for time lost while out of service.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

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

