

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21566
Docket Number CL-21833

Robert W. Smedley, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Washington Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8281) that:

(a) The Carrier violated the Rules Agreement, effective July 1, 1972, particularly Article 18, when it assessed discipline of dismissal on W. E. Stewart, Station Cleaner, Washington, D. C.

(b) Claimant Stewart's record be cleared of the charges brought against him on November 6, 1975.

(c) Claimant Stewart be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained in accordance with the provisions of Article 18(h). Claimant also to be made whole for any money he was required to spend for medical and hospital service, or other benefits which would otherwise have been covered under Traveler's Group Policy GA-23000.

OPINION OF BOARD: After hearing held November 6, 1975, claimant was discharged for falsifying his time card.

On Thursday, October 23, 1975, the work hours were 7:00 A.M. to 3:00 P.M. Claimant checked in at 7:30 A.M., and was directed to go to the Smith Building, some two miles distant, for work that day. He made out his time card showing arrival at 7:30 A.M., lunch 11:00 to 11:20 A.M., and departure 3:00 P.M. Claimant not having shown up at the Smith Building by 9:45 A.M., the foreman told him to go home, which he did without correcting his time card.

Claimant says he got a flat tire while trying to drive his car to the Smith Building. A witness saw him working on the tire shortly after 9:00 A.M. The foreman says workers are supposed to take a company bus and not drive their own cars to such assignments. Evidence is that, despite this rule, some individuals have driven on occasion.

To "falsify records" is a listed offense in the rules. A posted notice specifies that time cards are to be marked when one arrives and at the time of departure, and if one is allowed to leave early for any reason, the time shall show.

Carrier states that a false time card is tantamount to theft. We agree. This being so, the circumstances must be explored in some depth to determine whether there is substantial evidence of the charge as laid.

"The word 'falsify' may be used to convey two distinct meanings--either that of being intentionally or knowingly untrue, made with intent to defraud, or mistakenly and accidentally untrue." Black's Law Dictionary. Fourth Edition

The fraudulent and not the mistaken type must be shown to support this charge. Animus Furandi is an essential element of theft.

Fraudulent conduct is not shown. Instead, the evidence displays a comedy of errors, faux pas upon faux pas synergistically entrapping claimant into untoward circumstances. First, he was late to work. The bus to the Smith Building had left. He put down the time he anticipated working that day. This violated the posted notice, but was not done with intent to collect money for time not worked. Claimant intended to work his shift and leave from the Smith Building. He tried to drive his own car and had trouble. Then, when he was sent home, he omitted to correct his time card.

Evidence lacking, we cannot sustain the discharge. But that does not compel us to reinstate claimant with back pay and benefits. First, claimant was at fault in breaking the posted company rule about marking the time card and the rule about taking the bus. Then he dallied for two hours getting to his work station. This justifies severe discipline. Secondly, he was a short term employee and back pay would compensate him more than all his earnings up to the date of discharge.

We have carefully considered the procedural and other questions raised by the parties, and find them not dispositive of the issues.

The carrier erred but did not act in bad faith. In short, the carrier does not deserve a penalty, and claimant does not deserve a reward. Claimant shall be suspended up to the date of this award, but then reinstated, retaining seniority, but without back pay or other benefits.

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

The agreement was violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1977.