

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21720
Docket Number CL-21837

James F. Searce, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees

PARTIES TO DISPUTE:

(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8283) that:

1. Carrier failed to adhere to the Agreement between the parties when, on the date of March 19, 1975, Mr. L. F. McCormack was assessed discipline of dismissal from Carrier's service and,

2. Carrier shall now restore Mr. L. F. McCormack to service with all rights unimpaired and compensate him for salary lost, retroactive to March 19, 1975.

OPINION OF BOARD: In this discipline case, Mr. L. F. McCormack was employed as a Chief Clerk at Carrier's Mt. Clare Yard at Baltimore, Maryland. On March 1, 1975 on the basis of an anonymous telephone call, Carrier's Police Officers went to claimant's home where they found a cache of office equipment and supplies. Claimant was subsequently dismissed from service following a hearing at which he substantially admitted that he had improperly and without authorization removed the referenced equipment and supplies from Carrier's property. He denied, however, that the material was intended for his personal gain, but rather contended that he intended the material as a "back up" supply for possible use at his yard office.

The only question to be resolved in this case is whether, in all of the circumstances which exist, the discipline by dismissal is "harsh and excessive" as contended by Petitioner or "proper" as argued by Carrier.

Here the claimant had been employed for thirty-two years. There is no evidence in the record of handling on the property that claimant had been involved in any other disciplinary matters during that tenure. Carrier, for the first time in their submission to this Board, alludes to "two prior occasions" of discipline but does not elaborate thereon to any degree. As was said in Award No. 21289 of this Division:



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"* * * * Documented past discipline records are most important in assessing whether dismissal in a given case for a given offense was reasonable. Carrier has the burden of presenting such documentary evidence if it exists. We have been deprived of the opportunity to pass on this important question because of a void in the record before us. * * *."

One should not mete out the most extreme penalty merely because the act alone is a violation of a rule. One of the fundamental purposes of discipline is to change an errant behavioral pattern in an employee as well as to serve as an example for training of other employees. The Board recognizes that any dishonest act is a serious offense and can - and quite often does - justify dismissal.

In this case, however, we feel that the more than two year absence from Carrier's employment has served its purpose. Claimant should, therefore, be returned to service with seniority rights unimpaired, but without any payment for time lost. The claimant should understand without any question that proven recurrences of the unacceptable conduct of which he was found guilty in this instance may well result in his permanent termination by Carrier.

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 discipline imposed was excessive.

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. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1977.