

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21759
Docket Number CL-21854

George S. Roukis, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
PARTIES TO DISPUTE: (
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8264, that:

1) Carrier acted arbitrarily, capriciously, and in abuse of its discretion and in violation of the Clerks' Agreement at Chicago, Illinois when it dismissed employee L. W. Balom as a result of investigation held September 23, 1975.

2) As a result of this violation, Carrier shall now restore L. W. Balom to his former position with all rights and privileges unimpaired and pay him for all time lost.

OPINION OF BOARD: Claimant argues that Carrier acted arbitrarily, capriciously and in abuse of its discretion when it dismissed him from service. Careful review of the record not only substantiates the accuracy of the charges, but clearly documents a course of conduct that, if continually tolerated, could prove baneful to Carrier operations.

While mindful of previous National Railroad Adjustment Board awards which set forth compelling arguments supportive of rehabilitative counseling, the Board concludes that the Claimant's employment history, including his failure to notify his representative that he was not coming to the rescheduled investigative hearing on September 23, 1975, affirmatively underpins Carrier's terminative decision. This Board has consistently observed in numerous disciplinary cases the efficacy and necessity of promptly correcting behavioral problems.

This was not the first time claimant was subject to disciplinary action. Ameliorative attempts were made to address constructively his previous infractions. Carrier's decision was not based upon wilful or capricious motivation, but instead was buttressed by substantial probative evidence. Pertinent to this finding of substantial evidence of record is Third Division Award 19412 (Blackwell) which states, in part:

"One of the well established rules of the Board in determining discipline cases is that in judging whether the Carrier sustained its burden, the Board will not try to reconcile or choose between contradictory, conflicting testimony of opposing witnesses at the hearing. It is sufficient if the Carrier's decision was based on substantial evidence of record. These rules and criteria applied to the record before us, preclude the Board from disturbing the Carrier's finding of guilt on the charge."

Accordingly, on the entire record, the Board concludes that the contract was not violated.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1977.