

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22021
Docket Number CL-21934

Joseph A. Sickles, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8306, that:

1. Carrier acted arbitrarily, capriciously, in abuse of its discretion, and in violation of the Clerks' Rules Agreement at Milwaukee, Wisconsin when it failed to afford a fair and impartial investigation and dismissed George Lahmann and Daniel Dawe from service November 5, 1975 without proving charges against them.

2. Carrier shall now be required to restore Messrs. Lahmann and Dawe to the positions they held at the time of dismissal, with all rights and privileges unimpaired, and pay them for all time lost commencing November 6, 1975 and until they are restored to service.

OPINION OF BOARD: On November 6, 1975, the Claimants (Storehelpers) were notified of charges as follows:

"1. Damaging company property on November 5, 1975 on or about 1:30 p.m. when you forced entry into building SD-38.

2. Illegally entering a company building on November 5, 1975 approximately 1:30 p.m. for the purpose of stealing company material.

3. Absenting yourself from your assigned place of duty on November 5, at approximately 1:30 p.m.

4. Stealing company property consisting of four (4) marker lamps on November 5 at approximately 1:30 p.m."

Subsequent to investigation, both Claimants were dismissed from service for violation of charges 2, 3 and 4. In January of 1976, they were reinstated on a leniency basis.

The employees deny any complicity and state that they observed that the outside door to the building was open (as they passed the building during a break) and they looked in as a matter of curiosity. One entered the building, and the two were apprehended by Supervisors who accused them of attempting to steal marker lamps.

Although the Employees deny it, there is evidence that they admitted their involvement to Carrier's Officers.

Regardless of the extent of the charges, we are of the view that the Carrier presented substantive evidence to establish guilt.

There is no basis of record to suggest that the Employees had any reason for being in the area. We would presume that the more appropriate method of dealing with a door "ajar" would be to notify someone in authority, rather than performing their own investigation. Finally, we note that the Employees attempted to avoid detection when they were observed.

The restoration to service makes it unnecessary for us to consider if dismissals were appropriate under the circumstances.

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 not violated.

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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 April 1978.