

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22459  
Docket Number CL-22631

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8609) that:

1. Carrier acted arbitrarily and in a harsh and discriminatory manner when on February 23, 1977, it dismissed J. L. Wallace from the service following investigation held on February 17, 1977.

2. Carrier shall reinstate J. L. Wallace with seniority and all rights unimpaired.

3. Carrier shall reimburse J. L. Wallace at the rate of his position, including subsequent wage increases as a result of his wrongful dismissal.

OPINION OF BOARD: On February 10, 1977, claimant, a clerk in Carrier's Moncrief Yard, Jacksonville Terminals, was charged "...with unauthorized use of the Company telephone system during October, November and December, 1976, resulting in long distance toll charges against the company by Southern Bell Telephone Company on calls made by you. You are further charged with violation of outstanding instructions pertaining to use of Company telephones for personal business and with failure to be in position and perform the duties of your assignment during the times the calls were being made."

Formal investigation was held on February 17, 1977, and on February 23, 1977, claimant was notified of his dismissal from service.

A review of the transcript of the investigation, including claimant's statement, shows substantial evidence in support of the charge of unauthorized use of the Company telephone system, and with violations of instructions pertaining to the use of Company telephones for personal business. The record shows that long distance calls were made by claimant from Jacksonville to San Antonio, Texas, and Foster,

Texas, during the months of October, November, and December, 1976. Claimant advised the Carrier's officers, when questioned about the matter, that he made the calls trying to get in touch with his wife. Claimant reimbursed the Carrier in the amount of \$64.50, on February 10, 1977, the same date on which he was handed the letter of charge.

We do not find substantial evidence in the record that claimant's duties were left undone or any work instructions not carried out on the days the involved telephone calls were made.

Based on the entire record, the Board finds that discipline was warranted, but that permanent dismissal was excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but 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 Employees 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

That the discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1979.