

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22592

Docket Number CL-22461

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8543) that:

1. The Carrier violated the BRAC Agreement and fundamental rights of Anthony F. Marcello, when it discharged him for "conduct unbecoming an employee" in that the punishment of discharge was grossly excessive, constituted unequal treatment, was totally arbitrary, unreasonable, an abuse of discretion, and further that the hearing was not held in an impartial manner.

2. The Carrier discriminantly and prematurely removed Mr. Marcello from the clerical roster effective February 1, 1977. Mr. Marcello had not at that time nor to this date; exhausted all of his rights under the Railway Labor Act. As a management employee, Mr. Marcello was paying dues to the BRAC Organization (in line with the Illinois Central Agreement) for the purpose of retaining his seniority on the clerical roster.

3. The Carrier shall be required to restore Anthony F. Marcello to service with full seniority rights unimpaired, and be compensated for all lost wages, health and welfare benefits accruing to him from the period commencing the date he was first held out of service, namely, November 10, 1976, until such time as he is restored to service.

OPINION OF BOARD: Claimant was charged with conduct unbecoming an employee when it was asserted that he sold alcoholic beverages to various carrier employees during the year 1976. As a management employee, claimant was not ordinarily entitled to an Agreement Rule 37(a) investigative hearing, but because of his clerical seniority status, he was accorded these rights.

An investigation was accordingly held on November 29, 1976, pursuant to the aforesaid rule, at which time claimant was found guilty of the specifications and dismissed from service, effective December 13, 1976. This disposition was appealed on the property and is presently before us for adjudicative finality.

In reviewing this case, the facts and circumstances surrounding claimant's specific actions are explicit. The record shows that he improperly sold cases of miniature liquor that had been stolen from American Airlines to several other fellow employees. The testimonial record confirms these transactions. Inasmuch, as claimant refused to testify or cross-examine witness to impugn or clarify negatively toned interpretative statements or connotations, the investigative record amply substantiates the charges.

Similarly, we find no evidence, after searching examination of the trial transcript, that claimant was unfairly treated or denied basic administrative due process rights. Carrier convened the investigation consistent with Agreement procedures and institutionalized railroad practice and conducted the hearing in a judicially impartial manner. The witnesses freely testified on the particular aspects of these impermissible exchanges and collectively depicted an unmistakable course of conduct which showed that claimant engaged in a large scale sale of liquor to other employees. Moreover, to further underscore the severity of these improprieties, claimant was indicted by a Grand Jury and subsequently pleaded guilty to a charge of criminal possession of stolen property with an intent to enrich himself.

It is an axiomatic principle in labor-management relations that dishonesty is a dismissible offense. This is particularly relevant in the railroad industry where the parties to a collective bargaining agreement are statutorily vested with a vital public interest responsibility. (See for example on this point Third Division Awards 19735 and 21334). Employees are expected to observe scrupulously the applicable rules and regulations governing their work place assignments and wilfull deviance from these norms in whatever form is plainly intolerable.

In the instant case, the record supports the charges and we find no mitigative or procedural rationale to disturb or modify the penalty imposed. Claimant was ably represented by the employe organization, despite the difficulties of the case and was adjudged guilty according to the judicial process sanctioned by the Railway Labor Act as amended. We will deny the claim.

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FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.