

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22595
Docket Number MW-22519

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Southern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
that:

(1) Mr. D. R. Bookout was removed from service without just and sufficient cause and on the basis of unproven and disproven charges (System File MW-100).

(2) Mr. Bookout's record shall be cleared of the charges and he shall be paid for monetary loss suffered as a consequence of the aforesaid removal from service, including but not limited to

all time - regular and overtime;
all holiday pay;
all meal allowances;
all vacation earned but not allowed or paid."

OPINION OF BOARD: Claimant was charged with conduct unbecoming an employee of the Southern Railway Company, specifically in connection with his alleged action regarding the alteration and/or fabrication of company records to accommodate the costs charged by the Piedmont Maintenance and Construction Company for work done.

An investigative hearing was held on August 31, 1976 at which time, Carrier found claimant guilty of the charges and dismissed him from service, effective September 16, 1976.

Claimant appealed this disposition on the property pursuant to Agreement procedures and Carrier subsequently modified this penalty on March 23, 1977.

In the transmittal letter conveying this change, the Assistant Director of Labor Relations informed the General Chairman that, "Based on the above consideration and the overall record in the dispute, this is to advise you that Southern is agreeable to restoring Mr. Bookout

to service on a leniency basis and permitting him to exercise his seniority as B&B mechanic, but without pay for any time lost."

Claimant excepted to this arrangement and apprised Carrier by letter dated May 22, 1977 that he would not accept Carrier's settlement conditions and instead set forth the terms upon which he would return to service.

Claimant did return to service August 30, 1977 and the unresolved issues were appealed to this Board for adjudication.

Carrier asserts that the claim is improper since it differed from the claim originally filed. Initially the claim requested that claimant be restored to service and paid for all time lost subsequent to and including August 25, 1976 and permitted to exercise his seniority to a schedule position.

When it was appealed to the Board, it spelled out in greater detail the monetary losses claimed.

In reviewing this question, we find that the claim is properly before us since Carrier informed claimant that he had the right to claim these rights. In its June 16, 1977 letter, it stated in pertinent part that,

"It is imperative that you understand that because your restoration is a result of a modification of the assessed discipline and is not an offer to compromise your claim, you will retain your right to progress this dispute through the channels established by the Agreement. Therefore, although I am not agreeable to granting conditions 2 and 3 of your May 22 letter, you do have the right to claim these rights in an appeal progressed in accordance with the Agreement's grievance procedures."

On the other hand, we agree with Carrier that claimant is responsible for his conduct and defensively asserting past or parallel incidents is neither excusable or mitigative.

The record shows that while he did not receive money or in kind benefits for approving the Piedmont Maintenance and Construction Company's vouchers, he failed, nevertheless, to exercise that degree

of prudence and fiscal diligence expected of him. This is evidenced by his filling out in lieu of the Contractor, Form 1579, signing both his name and the Contractor's on that document and failing to take appropriate investigative action when informed by a subcontractor that the primary contractor was overcharging Carrier. It was singularly his responsibility, at this point, to scrutinize carefully the contractor's vouchers and work performance, rather than routinely proceed with business as usual and his failure to follow through was at his peril. Carrier was overcharged for the contracted services and claimant's indifference, perhaps unwittingly facilitated this result.

Based on the record, we are thus compelled to deny the claim.

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:

A. W. Pauls
Executive Secretary

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