

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22639  
Docket Number MW-22247

Dana E. Eischen, Referee

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

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

(1) The dismissal of Mr. C. E. Floyd for alleged 'conduct unbecoming an employee' was unwarranted, without just and sufficient cause and on the basis of unproven charges (Carrier's File MW-95).

(2) Mr. C. E. Floyd be reinstated with seniority, vacation and all other rights unimpaired and he be compensated for all wage loss suffered."

OPINION OF BOARD: An investigation by Carrier's Police Department yielded information that a vendor, S&H Oil Company, had charged and been paid in excess of \$41,000 for material and services not rendered in 1974 - 75. That investigation also indicated that Claimant, through his position as T&S Supervisor, had participated with others including General Division Engineer Davidson, in a conspiracy to double charge and otherwise overcharge Carrier for the fueling and repair of trucks by S&H Oil Company. Following due notice and hearing Claimant was found guilty and terminated from service on the following charge:

"\*\*\* conduct unbecoming an employee in connection with your involvement in embezzlement of funds from, and fraudulent actions against, Southern Railway Company by agents of an alleged S&H Oil Company and, in particular, but not limited to, your action in accepting payments from agents of said alleged S&H Oil Company in consideration for your knowledge and involvement in the actions of said agents in the billing and collecting of payments from Southern for services not rendered and for petroleum and other products not delivered."

Careful review of the hearing transcript and other record evidence indicates that Carrier had substantial evidence to support its conclusion of guilt. Carrier did not err in concluding that Claimant

had abused his supervisory position for personal profit by accepting kickbacks in the form of under the table payment from S&H Oil Company for performing work he was already being paid to do by Carrier, and for which S&H then double-billed Carrier. The record shows that Claimant realized at least \$875.00 as a participant in that scheme. Given the proven offense the penalty of dismissal was not excessive especially in light of Claimant's prior discipline for dishonesty on the job. See Awards 1-16483, 3-20003, 4-3033.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Paulus  
Executive Secretary

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