

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22991
Docket Number CL-23214

A. Robert Lowry, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8939)
that:

1. Carrier violated the Agreement between the parties when, effective December 1, 1978, it unjustly assessed discipline of dismissal on Mr. M. A. McClain, Centralia, Illinois.
2. That Carrier's action was an abuse of managerial discretion.
3. Carrier shall now restore Mr. M. A. McClain to service with seniority and all other rights unimpaired, and compensate him for all wage loss commencing December 1, 1978, and continuing until he is reinstated.

OPINION OF BOARD: During the months of August and September, 1978, M. A. McClain, the claimant, was employed by the Carrier as telegraph operator at Toland, Illinois. The Carrier charged claimant with using railroad credit without authority in making personal telephone calls on Carrier's commercial telephone at Toland.

Claimant was properly informed under the rules of the agreement to appear for investigation for the purpose of ascertaining the facts and determining his responsibility in connection with the charges. The investigation was held as scheduled on November 16, 1978. A copy of the transcript of the investigation was made a part of the record. Claimant was notified by letter of November 29, 1978 of his dismissal.

The Board finds after carefully examining the entire record, including the transcript of the investigation, substantial evidence in support of Carrier's charge of unauthorized use of the commercial telephone using Carrier's credit. The record also shows the claimant had been reprimanded for similar misuse of the Carrier's commercial telephone in February, 1978, and he had agreed at that time to refrain from using the Carrier's telephone for personal use.

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Claimant just prior to commencement of the formal investigation presented Special Agent Gray with his personal check in the amount of \$13.05 covering the eight personal telephone calls he made from Toland to his home in Centralia, Illinois. This check was later returned from the bank to the Carrier marked "insufficient funds."

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Claimant testified that he made the calls to his home, however, he denied making the call to Jacksonville which was of 85 minutes duration and cost \$14.55. This latter call, like the others, was made from the Toland office during claimant's assigned hours. The Carrier upon checking found this number in Jacksonville to be an unlisted number and when called the party answering refused to cooperate or confirm who made the subject call. However, since the claimant was the operator on duty at that time he was responsible for what took place in his office and, therefore, responsible for the telephone call to Jacksonville, irrespective as to who made the call.

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The Board confirms the discipline but believes the punishment was excessive. We, therefore, conclude, and so award, that the claimant be restored to service with seniority and all other rights unimpaired without back pay and upon the further condition that claimant reimburse Carrier for the personal telephone calls made using Carrier's credit, this to include the Jacksonville call. The record shows two amounts due: \$13.05 for the eight calls to his home, and \$14.55 to Jacksonville, a total of \$27.60, which amount, if claimant cannot pay upon reinstatement, may be withheld from his subsequent payroll vouchers.

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 discipline imposed was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.