

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23009
Docket Number CL-22992

Paul C. Carter, Referee

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-8857)
that:

(1) Carrier's action in the dismissal from service of Mr. James E. Paine, Agent-Operator, Manistique, Michigan, effective July 26, 1978, was unwarranted, arbitrary and capricious.

(2) Mr. James E. Paine shall now be returned to the service of the Carrier with seniority and all other rights unimpaired.

(3) Mr. James E. Paine shall now be compensated for all wages and other losses sustained account of this unjust dismissal.

(4) Mr. James E. Paine shall have his record cleared of all charges placed against him as a result of this dispute."

OPINION OF BOARD: At the time of the occurrence giving rise to the dispute herein, claimant was assigned as agent-operator at Carrier's station at Manistique, Michigan. He had occupied that position from March 1, 1976, and had been in Carrier's service since June 12, 1948.

On July 25, 1978, claimant was notified by Carrier's Superintendent that his employment with the Carrier was terminated with the completion of his tour of duty July 26, 1978. On August 16, 1978, claimant requested a hearing as provided for in the applicable Agreement. The hearing was scheduled for 2:00 P.M., August 24, 1978, in the Superintendent's Office at Stevens Point, Wisconsin. At the request of the District Chairman of the Organization, the hearing was rescheduled for 2:00 P.M., August 30, 1978. On August 22, 1978, the claimant requested the Superintendent to furnish a "list of charges or whatever I was fired for." On August 24, 1978, the Superintendent wrote to the Claimant outlining various deficiencies in his work performance as agent and his improper attitude toward officers, the last two paragraphs of his letter reading:

"This is the culmination of the unsatisfactory work you have performed since you have been in Manistique. Specifically, you are guilty of violation of Consolidated Rule 700, 702 and 970. You were insubordinate, quarrelsome, you failed to properly perform your duties and you did not properly keep station records.

"It appears that your performance has continued to deteriorate, your attitude is impossible and we have no alternative other than your dismissal as we cannot condone behavior or work performance at the level you have exhibited."

The hearing was conducted as rescheduled, on August 30, 1978. A copy of the transcript of the hearing has been made a part of the record. Without attempting to detail all the evidence adduced at the hearing, suffice it to say that there was substantial evidence to the effect that claimant did not properly perform his duties as agent; that he showed a belligerent and rebellious attitude toward officials when attempts were made to improve his performance; that he took no apparent remedial action, and that his over-all performance as agent was such that simply could not be condoned by the Carrier. It was also brought out that he had engaged in the smoking of fish and chicken in Carrier's freight house.

There is no proper basis to conclude that Carrier's action in dismissing claimant was unwarranted, arbitrary, or capricious.

The record shows that subsequent to claimant's dismissal, or on December 8, 1978, the Carrier offered to restore him to service as a telegrapher where he would be under direct supervision, with his seniority rights unimpaired, but with the understanding that he would not be permitted to hold a position at a one-man station, nor would he be paid for time lost. The offer of the Carrier was rejected by the Claimant. It has often been said that compromise offers that are rejected are not evidence of anything and have no standing before this Board.

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 Employee 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauler*
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1980.