

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23252
Docket Number CL-23178

Paul C. Carter, Referee

PARTIES TO DISPUTE: { The Cincinnati, New Orleans and Texas Pacific Railway Company
{ Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees

STATEMENT OF CLAIM: Carrier did not violate the agreement with the Brotherhood of Railway, Airline and Steamship Clerks as alleged, when it dismissed Ms. S. J. Toler, E-5 Extra Board Yard Clerk, Cincinnati, Ohio, from the service of the Carrier for cause on March 16, 1979.

Since the agreement was not violated, Ms. Toler is not entitled to restoration to service with all rights unimpaired, and compensation for all time lost, beginning March 2, 1979, and continuing until such restoration has been accomplished, as claimed in her behalf by the Clerks' Organization.

OPINION OF BOARD: The claim in this dispute has been submitted to the Board by the Carrier.

The record shows that Ms. S. J. Toler was an Extra Board Clerk on Carrier's Kentucky Division and resided in Cincinnati, Ohio. Her seniority date was March 10, 1977. On February 25, 1979, she was instructed to attend an investigation to be held at 3:00 P.M., on Friday, March 2:

"..... in which you will be charged with conduct unbecoming an employe in that on November 2, 1978, November 6, 1978, February 1, 1979, February 6, 1979 and February 8, 1979 you made long distance personal telephone calls from your home to Atlanta, Georgia (Area Code 404-296-4240 and Area Code 404-688-0800) and charged these calls to the Carrier without authorization and the Carrier was subsequently billed for such calls.

"You may bring to this investigation any witnesses and/or representative you so desire."

Claimant did not attend the investigation as scheduled and did not contact the Carrier to advise why she would not be present. At the request of the Organization Local Chairman the investigation was rescheduled for 3:00 p.m., March 13, 1979, by letter addressed to Ms. Toler dated March 2, 1979.

She was also advised at that time that she was being held out of service pending the investigation.

Ms. Toler did not appear at the second investigation scheduled for March 13, 1979. However, the Division Chairman read a statement which Ms. Toler had given him. A copy of the transcript of the investigation conducted on March 13, 1979, has been made a part of the record.

In the statement read into the investigation by the Local Chairman claimant did not deny that she made the calls from her home and had them billed to the Carrier. According to the Carrier and confirmed by the Organization, Area Code (404) 296-4240 is listed in the Atlanta, Georgia telephone directory as "Brotherhood of Railway Clerks, Southern Board of Adjustment." Area Code (404) 688-0800 was the number for the Southern Railway PBX operator in Atlanta. In the statement read into the investigation by the Local Chairman, Ms. Toler stated "I made the calls in reference of my claim to Mr. C. Muller." The call made to the Southern Railway PBX operator was because Ms. Toler, according to her statement, had "lost Mr. Muller's number."

The calls made did not concern railroad business. They were strictly personal calls, made and charged to the Carrier without authority of any Carrier official. The allegation of any inter-relationship between the Carrier and the Organization is not credible. We consider claimant's actions as attempts to defraud the carrier. Also, we consider claimant's failure to attend either of the two investigations, where she would be subject to questioning by officers of the Carrier and representatives of the Organization, to be derelict. (Award 15059).

There is no proper basis for the Board to interfere with the discipline imposed by the Carrier. The claim of the Carrier will be sustained.

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

The dismissal of Ms. S. J. Toler is upheld.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1981.