

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23289
Docket Number CL-23440

Paul C. Carter, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Washington Terminal Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood (GL-9202) that:

(a) The Carrier violated the Rules Agreement, effective July 1, 1972, particularly Article 18, when it assessed discipline of dismissal on J. D. Evans, Mail Handler, Washington, D.C., February 23, 1979.

(b) Claimant Evans' record be cleared of the charges brought against him.

(c) Claimant Evans be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained in accordance with the provisions of Article 18(e). Claimant also be made whole for any money he was required to spend for medical and hospital services, or other benefits which would otherwise have been covered under Travelers' Group Policy GA-23000.

OPINION OF BOARD: At the time of the occurrence giving rise to the claim herein, February 6, 1979, claimant had been regularly assigned about three and one-half months as a mail handler at Washington, D.C. The Organization advises that he had previously been employed as a hostler for three and one-half years; was dismissed as a hostler, and re-employed a month later as a mail handler.

On February 6, 1979, he was reported to have been "getting the mail mixed up." He was instructed several times by his Gang Leader to stop mixing, but continued to do so. During the discussion between the claimant and his gang leader, the Assistant Foreman overheard them and instructed the claimant to straighten the mail up, i.e., put it on the proper trucks. Claimant did not do so and the Assistant Foreman took him out of the service.

On February 8, 1979, claimant was instructed to report for a hearing on February 14, 1979, on the charge:

- (1) "When at approximately 2:20 a.m. on February 6, 1979 you were in an unfit condition to properly perform your duties when you did not comprehend and follow the instructions of your Gang Leader when he was unloading the Strasburg trailer, reading the mail, and calling the destinations to you; you placed the mail and continued to do so repeatedly on the wrong destination truck, which caused the mail to be badly mixed up."
- (2) "Violation of Washington Terminal Company General Rule 'N', '...being insubordinate,...', when at approximately 2:20 a.m. on February 6, 1979 you would not comply with the instructions of your Gang Leader when he was unloading the Strasburg trailer, reading the mail, and calling the destination to you; you placed the mail and continued to do so repeatedly on the wrong destination truck, which caused the mail to be badly mixed up. Shortly thereafter, your Foreman then instructed you to straighten the mail and place it on the right truck; you stood there and made no attempt to straighten the mail. Thereupon, you were removed from the service for insubordination; you then changed your clothes, became argumentative with your Foreman and it was then necessary to have you escorted from the property by the WTCO. Police."

The hearing was held as scheduled and a copy of the transcript has been made a part of the record. A review of the transcript shows that the hearing was conducted in a fair and impartial manner and that none of claimant's substantive procedural rights was violated. It was not a violation of the Agreement to insert claimant's prior record into the hearing or investigation.

In the hearing the Gang Leader testified that he explained to claimant how the mail was to be lined up, and that he told claimant four or five times to stop mixing the mail up. The Acting Foreman testified that he found claimant unwilling to keep the mail separated on the hand trucks as instructed by the Gang Leader; that he instructed the claimant to follow through with the Gang Leader's instructions "but he refused and stood looking at me."

On February 23, 1979, claimant was notified of his dismissal from service on the basis that he was guilty as charged.

Based upon our review of the entire record, the Board concludes that discipline was warranted. As stated in our recent Award No. 22638:

"Although supervisory discretion might well have prevented the confrontation in this case, there is no way to escape Claimant's culpability. Insubordination does not consist solely in the flat refusal to perform assigned work. ..."

and in Second Division Award No. 7128;

"... Insubordination may occur without a stated refusal to do the work, as in the instant case, where the employee's actions were diametrically opposed to complying with the lawful instructions of his supervisor."

While discipline was warranted, we consider permanent dismissal as excessive. The time that claimant has been out of service should constitute sufficient discipline. We will award that claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of service.

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 dismissal was excessive.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

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