

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23291
Docket Number MW-23472

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

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

(1) The dismissal of Trackman George E. Edwards was without just and sufficient cause (System Docket 397).

(2) Trackman George E. Edwards shall be returned to service without loss of seniority, with vacation and all other rights and privileges unimpaired, and be compensated for wages lost during the period of dismissal."

OPINION OF BOARD: The record shows that claimant entered Carrier's service as a trackman on September 20, 1976. He was furloughed on January 7, 1977, and returned to service on June 19, 1978. During the time that claimant was furloughed, the Carrier learned that he had been arrested on October 1, 1977, and charged with deceptive false identification and forging a check of another employe of the Carrier. Claimant was subsequently found guilty of these charges on May 19, 1978, in Criminal Court.

Upon claimant's return from furlough on June 19, 1978, he was immediately removed from service and given a notice to attend trial on June 26, 1978 on the charge:

"Cashed Conrail Payroll Check No. D-3239950 dated February 8, 1977 payable to D. C. Toney, Employee No. 113744, which disappeared from office of Assistant Production Engineer W. H. Braughton, Hawthorne Yard, Indianapolis, Indiana, on or about February 8, 1977."

The trial was held as scheduled. Claimant was present throughout the trial and was represented by the District Chairman of the Organization. A copy of the transcript of the trial has been a part of the record. Following the trial, or investigation, claimant was dismissed from service by notice dated July 11, 1978.

In the trial, or investigation, Criminal Court records were introduced showing that claimant had been found guilty as charged; received a two to fourteen year suspended sentence, except 37 days served in jail; ordered to make restitution of \$351.00 and court costs in ninety days.

In the trial, or investigation, conducted by the Carrier, the claimant did not deny having cashed the check issued in favor of another Conrail employee. The employee for whom the check was issued stated that he did not receive a payroll check on February 8 or 9, 1977, and that he authorized no one except the Track Supervisor to pick up his pay check. The record also shows that the last payroll check issued to the claimant was dated January 25, 1977, and showed a bank endorsement of January 26, 1977. The last expense check for claimant was dated January 19, 1977, and also showed a bank endorsement of January 27, 1977.

Based upon the entire record, the Board finds substantial evidence in support of the charge against the claimant. While there were conflicts in the testimony adduced at the investigation, or trial, it is well settled that this Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Dismissal from service is not unusual discipline in a case of this kind. The claim will be denied.

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. Pauls
Executive Secretary

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