

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23425
Docket Number CL-23439

A. Robert Lowry, 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-9175) that:

(a) The Carrier violated the Rules Agreement, effective July 1, 1972, particularly Article 18, when it assessed discipline of dismissal on H. M. Ware, Station Cleaner, Washington, D.C., on June 19, 1979.

(b) Claimant Ware's record be cleared of the charges brought against him on June 4, 1979.

(c) Claimant Ware 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 to 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: Mr. H. M. Ware, the claimant, was employed by the Washington Terminal Company as a Station Cleaner on May 30, 1979, with assigned hours 6:30 a.m. to 3:00 p.m. The Carrier observed claimant absent from his assigned place of work and assigned duties from 11:30 a.m. until 12:25 p.m., 55 minutes on this date. The claimant's time card for this date made claim for the time absent without permission.

Carrier notified claimant on June 4, 1979, to appear for a hearing Thursday, June 14, 1979, on the following charges:

- "1. 'Violation of WTCO. General Rule 'O', which states in pertinent part, 'No employe will be absent from duty ...without permission,' when on May 30, 1979, you were observed by a WTCO. Policeman, at about 11:35 a.m., on the MU Train. After riding this train to the Roundhouse, you returned to the Station at 12:05 p.m. The above incidents occurred when you should have been working.'
2. 'Violation of WTCO. General Rule 'N', which states in pertinent part, '...falsifying reports, ...is prohibited,' when, on May 30, 1979, you absented yourself from your assignment but filled out your time card to show 7 hours and 50 minutes.'

The Carrier's Rules "O" and "N" read as follows:

- "O. No employe will be absent from duty, have a substitute perform his duties, or engage in other business without permission."
- "N. Employes must be of good moral character and must conduct themselves at all times, whether on or off Company property, in such manner as not to bring discredit upon the company.

Stealing, falsifying reports, being insubordinate, engaging in altercations, gambling, playing games, participating in any illegal, dishonest, or immoral activity, while on duty or while on Company property, is prohibited.

Participating in any unauthorized or unnecessary activity while on duty or while on Company property, is prohibited.

Employes are prohibited from entering cars except in the performance of their duty. Loitering in cars is prohibited."

The hearing was held as scheduled on June 14, 1979. Claimant was represented by the Organization's Local Chairperson. He produced no witnesses in support of his case. A careful reading of the entire record including the transcript of the hearing reveals claimant and his representative were given every opportunity to examine and cross examine Carrier's witnesses. The evidence developed by Carrier in the hearing fully supported its charges that claimant was (1) absent from duty without permission, and, (2) falsified his time card, thereby violating Rules "O" and "N" of the Carrier's General Rules, quoted above.

The Board affirms the judgment of the Carrier in its discipline and finds it not excessive, especially in view of the claimant's personal record. The Carrier's action in dismissing this employe was justified and with sufficient cause. The action was not arbitrary, capricious or in bad faith. There is no proper basis for the Board to interfere with the discipline imposed.

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 Employes involved in this dispute are respectively Carrier and Employes 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. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.