

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23426
Docket Number CL-23444

A. Robert Lowry, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
{ Chicago, Milwaukee, St. Paul and Pacific
Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9007) that:

1) Carrier violated the Clerks' Rule Agreement at Missoula, Montana when it charged employe H. T. Davis, held an investigation, and dismissed him without proving the alleged charges.

2) Carrier shall now be required to reinstate Employe H. T. Davis, clear his record of the alleged charges and compensate him for all lost time commencing December 30, 1978 and continuing until he is returned to service.

3) Carrier shall further be required to pay premiums for the claimant's health and welfare, life insurance and dental plan coverage which it would have made had it not unjustly dismissed him from service.

4) Carrier shall further be required to pay interest at the rate of seven and one-half percent (7½%) per annum, compounded annually on the anniversary date of this claim, based on the amount due in Item 2 above.

OPINION OF BOARD: Mr. H. T. Davis, the Claimant, was employed as a Rate Clerk by the Carrier at Missoula, Montana. He has a seniority date of October 15, 1970. On December 7, 1978, the Carrier notified Claimant to appear at a formal investigation at 10:00 A.M. Thursday, December 14, 1978, for the purpose of developing the facts concerning alleged falsification of timeslips covering the dates of July 3 and 4, October 2, 3, 4, 5, 6, 27 and 28, 1978. The Claimant's representative, Local Chairman J. P. Shannon requested a postponement until December 28th but Carrier unilaterally set a new date of December 21, 1978.

Claimant was dismissed from service on December 30, 1978.

A laborious and tedious study of the transcript seems to indicate that Claimant was given a fair and impartial hearing. He was represented by his Local Chairman, presented witnesses to support his position and was permitted to examine and cross examine witnesses of the Carrier.

The crux of this dispute involves a questionable practice in the Missoula office. Claimant contended, supported by his witnesses, that supervisors, including one train dispatcher, required some employees, including Claimant, to work in excess of nine hours in a 24 hour period in violation of the Hours of Service Act of 1907, as amended, they were further instructed not to report the excess hours worked but would be given time off on another date to compensate for such overtime worked. Through this process Claimant contended he had accumulated 11 hours overtime and was attempting to recover the time by taking off work on July 3 and 4. There was considerable conflicting and confusing testimony over the question of Claimant having obtained authority to be absent on these days. The regular assigned agent, Claimant's supervisor, was on vacation at this time resulting in some confusion over the authority vested in the relief agent. The record shows there was discrepancies in the timeslips on file in the Missoula office and the Chicago office, from which payment is made.

It stands to reason that by following such a practice the timeslip records in the Missoula office could not show time worked in excess of nine hours by an employee subject to the Act. Otherwise Federal Railroad Administration's inspectors could readily detect violations of the Act. Additionally the timeslips of employees making up the accumulated overtime would show the employee working when in fact he would not be. Thus, by engaging in the practice the timeslips on file in the Missoula office could not be a true and correct representation of the work actually and/or not performed by such employees.

In this charge the Claimant who had accumulated time as a result of the practice was fired for attempting to recover the accumulated time when the regular agent was absent giving rise to a question of his authority to be absent.

The charge involving Claimant's time slips claiming sick leave, October 2, 3, 4, 5, 6, 1978, resulted in more confusing and conflicting testimony concerning the question of whether Claimant was in fact sick or had properly notified his supervisor that he was laying off sick. The agreement provides a procedure for the Carrier to follow if it has doubts about an employee's sick leave claim. It can require the employee to provide satisfactory evidence of sickness in the form of a certificate from a reputable physician. Instead of following this agreed upon procedure the Carrier preferred charges against Claimant. The Carrier's primary witness in this charge apparently resigned rather than testify!

The charges of falsifying timeslips for October 27 & 28, 1978, were defended by Claimant's contention that he recognized he had made a mistake and attempted to correct it by sending a teletype message to the Chicago office, which apparently was never received. Here again there is cloudy testimony concerning the method used in the transmission or non-transmission of the message. Claimant adamantly held to his position that he had made the effort to correct the timeslips.

The Board finds in view of the entire record that Claimant should be returned to service with all rights unimpaired but without back pay.

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 discipline imposed was excessive.

A W A R D

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A. W. Paulson

Executive Secretary

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