

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23471  
Docket Number CL-23222

Josef P. Sirefman, 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  
(CL-8913) that:

- (1) Carrier violated the Clerks' Rules Agreement at Bensenville, Illinois when it charged Employee W. H. Barton, held an investigation and dismissed him without proving the alleged charges.
- (2) Carrier shall now be required to reinstate Employee W. H. Barton, clear his record of the alleged charges and compensate him for all lost time commencing December 6, 1978 and continuing until he is returned to service.
- (3) Carrier shall further be required to pay premiums for 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 (7½) percent per annum, compounded annually on the anniversary date of this claim based on the amount due in Item (2) above.

OPINION OF BOARD: Claimant W. H. Barton, a Janitor, was issued a November 23, 1978 Notice of Investigation to be held on November 29, 1978:

"...for the purpose of developing the facts and circumstances in connection with your alleged solicitation of, and acceptance of monies from a Railroad Contractor (Future Janitorio and Window Cleaning Service, R. Basulto prop.) for the award of a contract, or contracts."

The notice further specified three time periods from 1973 to 1978 when the claimed solicitation and payment occurred. On December 6, 1978 Claimant was dismissed.

At the investigation various Carrier officials stated that they had interviewed Mr. Basulto on separate occasions and that he told them that Claimant had demanded and on occasion received checks made to the order of Claimant's wife for contracts to clean Carrier's facilities. Mr. Basulto did not appear at the investigation but his written statement containing information he had supplied in the interviews was included in the record.

The Organization contends that the record is insufficient to sustain discipline because it is based entirely upon hearsay, i.e., the contractor did not appear at the investigation, his written statement could not be cross-examined, and the testimony of the interviewers was cumulative repetition of the Carrier's charges rather than independent corroboration. In the opinion of this Board Carrier's decision to terminate Claimant was not based solely on hearsay. Rather there is additional objective evidence in the entire record, namely the three checks to the order of Claimant's wife for \$250.00 each, the said wife having been an employe of the Railroad during the period involved, and Claimant's position as one concerned with the proper maintenance of the Carrier's facilities, all of which are consistent with and lend support to the contractor's assertions. There was substantial evidence to sustain the Carrier's decision to discipline Claimant. In view of the seriousness of the misconduct termination is reasonable.

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. Paulsen*

Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.

