

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23476  
Docket Number CL-23326

Josef P. Sirefman, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station Employees  
{ The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the Committee of the Brotherhood (GL-8982) that:

(a) Carrier violated the rules of the current Clerk's Agreement at Los Angeles, California, on April 24, 1978, when it wrongfully discharged Ms. J. G. Lawson from service, and

(b) Ms. J. G. Lawson shall now be reinstated and compensated for all monetary loss suffered commencing April 24, 1978, and continuing until such time that she is reinstated as a result of such violation of Agreement rules.

(c) The Carrier shall now be required to pay 10% interest compounded daily on all wages wrongfully withheld from Ms. J. G. Lawson commencing April 24, 1978.

OPINION OF BOARD: Claimant J. G. Lawson, a Clerk, was on jury duty from January 11th to February 17th, 1977. She filed for pay under the contract for said duty for February 1st through 4th and February 7th through 11th and was duly paid by the Carrier. About a year later, in the course of researching Claimant's attendance record, Carrier received a letter from the Jury Commissioner that Claimant "did not make herself available for jury service on the dates mentioned", namely February 1st through 4th and 7th through 11th, 1977. This information was passed on to the Superintendent on March 31, 1978 and a notice of investigation was issued on April 5, 1978 for an April 12th hearing. On April 24, 1978 Claimant was removed from service.

Rule 24-a of the contract provides for "a formal investigation, which shall be promptly held but in any event no later than 20 days from date the Company has factual knowledge of occurrence of the incident to be investigated...". The Organization contends that since Claimant put in for jury duty pay a year earlier the Carrier had "factual knowledge" then which it could have acted upon. Its failure to do so for so long bars the discipline. This contention is not persuasive. Submitting paperwork claiming pay for days not actually served on jury duty is an act of concealment. In such a circumstance the time when Carrier is in possession of "factual knowledge" is when the concealment is discovered. Such discovery was made with the receipt of the letter from the Jury Commissioner that Claimant had not in fact served on the days she claimed to the Carrier. From that point on the Carrier proceeded within the time limits established by the contract.

With respect to the charge, Claimant acknowledged at the investigation that she was aware of the Court rule that on days she was not needed as a juror she was to report back to work; that she signed the payroll form given to the timekeeper, her signature certifying to the Carrier that her information was correct, for those days. Claimant also agreed that she received only \$95.40 from the Court covering but 18 days of jury service, well short of the total days she claimed to have been on duty and that she did not challenge that sum. Finally any certification of jury service Claimant may have furnished Carrier in applying for the pay is not dispositive of the issue, for the March 29, 1978 letter from the Jury Commissioner makes clear that "Such forms are of a tentative nature pending review of actual attendance records on file in this office. Final payments are computed and made from such records". It was from this review that the check from the court, excluding the dates contained in the charge, was calculated. In sum, an examination of the record by the Board establishes that there was substantial evidence to sustain Carrier's decision to discipline Claimant. In view of the seriousness of the violation dismissal 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 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 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.