

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

**Award Number 23523
Docket Number CL-23815**

Paul C. Carter, 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 System Committee of the Brotherhood
(GL-9345) that:

- (a) Carrier violated and continues to violate the rules of the current Clerks' Agreement at Los Angeles when it wrongfully discharged Mr. Richard Brown, and
- (b) Carrier shall now return Mr. Brown to service and shall compensate him for all wage loss commencing August 9, 1979, and continuing so long as he is wrongfully held out of service, and
- (c) In addition to the compensation for lost wages the Carrier shall pay ten per cent (10%) interest compounded annually on all wages withheld from Mr. Brown.

OPINION OF BOARD: Claimant had a seniority date of April 6, 1976, on the Manager Sales and Service, Seniority District, working out of Los Angeles and at the time of the occurrence giving rise to the dispute herein, was the regularly assigned occupant of Tracing Clerk Position No. 6109, assigned to work 7:45 A.M. to 4:30 P.M. Wednesday, Thursday and Friday and 7:00 A.M. to 3:45 P.M. Saturday and Sunday.

On July 12, 1979, claimant was notified by the Regional Sales Manager:

"You are hereby notified to attend formal investigation in Santa Fe Building, Conference Room 312, at 9:00 AM, Tuesday, July 24, 1979, concerning your allegedly unauthorized access to company records at approximately 3:20 PM, July 8, 1979, so as to determine facts and place responsibility, if any, involving possible violation of Rules 2, 15, 16, 17 and 20 of the General Rules for the Guidance of Employees, Form 2626 Standard.

You may arrange for representation in line with the provisions of Agreement or Schedule governing your working conditions and you may likewise arrange for the attendance of any desired witnesses."

The investigation was postponed and conducted on August 2, 1979. The rules cited in the notice of July 12, 1979, were quoted in the investigation and will not be repeated here.

A copy of the transcript of the investigation has been made a part of the record. We have carefully examined the transcript and find that none of claimant's substantive procedural rights was violated. The charge against claimant was sufficiently precise to enable claimant and his representative to prepare a defense.

In the investigation, there was substantial evidence that claimant left his desk in his assigned work location, obtained keys that were kept by a supervisor, went to a different location, unlocked the filing cabinet which contained personal records and other personal and confidential material, and was observed by two witnesses at about 3:20 P.M. searching personal records without authority to do so.

It was also brought out in the investigation that claimant requested one of the supervisory employees who observed him searching the records, not to report the matter.

Based on the entire record, there is no proper basis for this Board to interfere with the discipline imposed by the Carrier.

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. Paulson

Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1982.

