

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24295
Docket Number CL-24453

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
{ Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9534) that:

1. Carrier violated the terms of the parties' agreement, particularly Rule 21, when on May 12, 1980, it dismissed from service Ms. K. L. Borowiak, Roadmaster's Clerk at North Fond du Lac, Wisconsin, account of an investigation held on May 7, 1980, and,

2. Carrier shall now be required to reinstate Ms. K. L. Borowiak with all rights unimpaired and compensate her for all time lost, to include any losses suffered account suspension of fringe benefits, up until the time this violation is corrected.

OPINION OF BOARD: Claimant was employed as Roadmaster's Clerk at North Fond du Lac, Wisconsin. Her duties included the making up of payrolls for the Roadmaster and employes under his direct supervision. On April 21, 1980, Claimant was notified to attend formal investigation on April 25, 1980, in connection with the charge:

"Your responsibility for failure to record proper information on your payroll, Form 1252, for the first period of April, 1980, while you were employed as Roadmaster's Clerk, Job 002, North Fond du Lac, Wisconsin."

The investigation was postponed and conducted on May 7, 1980. A copy of the transcript of the investigation has been made a part of the record. On our review of the transcript, we find that none of Claimant's substantive procedural rights was violated. During the investigation, Claimant's representative contended that the charge was not specific and clear and did not meet the requirements of the Agreement. We consider the charge sufficiently precise to inform the Claimant the purpose of the investigation and to permit her and her representative to prepare a defense. The charge met the requirements of the Agreement.

The Claimant's representative also objected to the order in which the testimony was taken, statement being taken from the Claimant first, while he contended that Company witnesses should testify first. We have been referred to no rule in the Agreement specifying the order in which statements will be taken, or witnesses testify. Disciplinary proceedings are not criminal proceedings and strict rules of evidence do not apply.

In the investigation it was developed, and Claimant admitted that she was absent on April 3, 7 and 8, 1980, but she showed herself on the payroll for eight hours for each of those days, as well as for eight hours holiday pay for April 4, 1980. Claimant stated, however, that the reporting of the time as she did "was not done intentionally", and that the time was corrected on the second half of April payroll.

The Roadmaster testified that upon Claimant's return to work on April 9, 1980, he told Claimant that she was counted as absent on the days involved. He also testified that payrolls were usually sent in (to the Accounting Department) on the 16th and the end of the month or the first day of the following month, and that the payroll for the first half of April was forwarded subsequent to his conversation with the Claimant. It was also developed in the investigation that Claimant had been properly instructed concerning the preparation of payrolls. Following the investigation, Claimant was notified on May 12, 1980, of her dismissal from the service.

The Carrier contends that in the handling of the appeal on the property, the Organization's contention was based only on the severity of the discipline imposed. The record bears out this contention. In its submission to the Board, in addition to the severity of the discipline issue, the Organization contends that Claimant was denied due process because the Division Manager preferred the charges, assessed the discipline, and served as the first appeals officer. It is well settled that the Board, being an appellate tribunal, may only consider issues and defenses raised by the parties in the handling of the dispute on the property.

The Organization admits that Claimant did fail to properly record information on the payroll form but contends that it was an "inadvertent error" on the part of the Claimant. Considering all the facts in the case; the amount of time involved - 32 hours; the time when Claimant was informed by the Roadmaster - April 9, 1980 - that she was counted absent for the three days, and the time that payrolls are usually sent in - April 15 or 16, it strains reasoning to conclude that Claimant's action was simply an inadvertent error. Where employees report their own time a matter of trust is involved and all possible care should be used in seeing that the time is properly recorded.

Based upon our careful consideration of the entire record, we find no proper basis for disturbing the action of 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 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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemaria Brasch
Rosemaria Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April 1983.