

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24679
Docket Number CL-24495

Robert W. McAllister, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:

(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9569)
that:

(1) Carrier violated the Agreement between the Parties when, on June 17, 1981, it imposed discipline of dismissal from service upon Relief Clerk Thomas McNeill, Jr. as a result of an investigation held May 28, 1981, which was improper and,

(2) As a result of such impropriety, Carrier shall now be required to restore Claimant Thomas McNeill, Jr. to Carrier's service with full seniority and be compensated for lost wages beginning June 17, 1981, and continuing each subsequent date until he is so restored to Carrier's service.

OPINION OF BOARD: The Claimant, Thomas P. McNeill, Jr., was employed by the Carrier as a Relief Clerk in September of 1977. On May 5, 1981, his regular assignment was Dispo Clerk with a scheduled starting time of 3:00 P.M. That same day, an operator marked off sick, and this vacancy was ultimately filled by assigning the Claimant to cover the absence. The circumstances surrounding this assignment led to the charge of insubordination, and the resulting dismissal of the Claimant.

The Organization protests the Claimant's dismissal on the grounds the Carrier's actions were procedurally defective; that the record does not support a finding of guilt; that the penalty is unduly harsh and excessive.

The procedural argument is based upon the Organization's claim the Investigating Officer turned the transcript over to the Carrier's Trainmaster, R. S. Zacchi, who, it is asserted, was responsible for the charges being raised and who acted as the Carrier's chief witness. Subsequently, Trainmaster Zacchi imposed the discipline, and this, according to the Organization, is a violation of due process because the investigating Officer did not decide the case. While it is a fact that Trainmaster Zacchi did send the Claimant his notice of termination, there is no substantial evidence, other than the assertions raised by the Organization, that Trainmaster Zacchi was, in fact, the person who reviewed the transcript and made the decision the Claimant had committed an insubordinate act. Zacchi's dismissal letter dated June 17, 1981, advised the Claimant, as follows:

"...you have been found guilty of charge placed against you and the disciplinary action to be taken is dismissal from service effective June 17, 1981."

The wording of this letter clearly fails to support the Organization's claim in that it does not indicate Trainmaster Zacchi studied the transcript and made the disciplinary determination. Failing to find any other evidence to the contrary, we are satisfied with the conduct of the Hearing Officer and see no reversible error in the notice of dismissal.

Essentially, the Organization's defense is based upon asserted mistakes of judgement or just plain management ineptitude that created the situation confronting the Claimant. Notwithstanding, the Claimant's only course of action was to avail himself of the contractual procedures reserved for grievances. We agree with the Carrier that it cannot be required to allow an employee the option to determine when he will work and under what type of conditions except for safety related matters. The Board finds the evidence adduced at the investigation substantially proves the Claimant was insubordinate no less than three times. Considering the Claimant's short service and his prior disciplinary record, the Board holds the evidence clearly justified the action of dismissal.

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:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984

