

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24700  
Docket Number SG-25173

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Consolidated Rail Corporation

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation:

System Docket 1898-D, Western Region

On behalf of Robert Current, Jr., who was dismissed for allegedly misusing company funds between November 4, 1981 and January 4, 1982.

OPINION OF BOARD: Carrier contends this dispute is not capable of being judicially heard and determined by this Division because the claim does not ask for specific remedy or relief or allege Carrier violation of the Agreement. Review of the handling and the evidence does not support Carrier contention. Statement of the claim refers to System Docket 1898-D which is set forth in Mr. Bent's letter of August 16, 1982 to Mr. B. E. Britcher, General Charman, in answer to the latter's appeal as follows:

"Discipline by dismissal assessed R. P. Current following a trial in connection with the following charge:

'Violation of Rule L of the Conrail Rules of the Transportation Department wherein you allegedly misused money from Conrail Company Working Fund #79-27 between November 3, 1981 and January 4, 1982 for your own personal use without proper authority.'

It was understood that any applicable time limits would be extended from date of discussion to date of this reply."

Review of the above shows clearly Brotherhood's efforts to secure modification of the disciplinary action. Whereas the statement of claim to this Division is limited to referring to the claim by a brief note this does not preclude considering the specifics of Docket 1898-D nor militate against consideration of the case on its merits. The dispute went through a full course of handling on appeal with both sides fully aware of the nature of the case and objectives of the Brotherhood to secure modification of claimant's dismissal.

Claimant was employed some six and one half years as a Signalman; some 4 months as a signal foreman.

By letter of January 14, 1982, Carrier notified claimant to report for trial on January 19, on the following charge:

"Violation of Rule L of the Conrail Rules of the Transportation Department which states in part:

'Deliberate misuse or damage to Company's property is prohibited.

The unauthorized possession, removal or disposal of any material from railroad property or property served by the railroad is prohibited'

Wherein, you allegedly misused money from Conrail Company Working Fund #79-27 between November 3, 1981 and January 4, 1982 for your own personal use without proper authority."

By mutual agreement the trial was postponed three times; was finally held on March 2, 1982. Claimant was advised on March 5, 1982 of his dismissal from service. He was accorded a fair and impartial hearing in which he and his Brotherhood representative participated.

The facts are not in dispute. Claimant was entrusted with a working fund of \$3000 to meet expenses of his gang when on the road. When called into the office on January 4, 1982 for an accounting, preparatory to liquidating the fund, prior to laying off the gang, it was found that the fund was short \$734.23. Questioned on this claimant said, at first, the Assistant Foreman had some of the money and the rest was covered by receipts not yet turned in to the office. Allowed time to leave and attend to these items, he returned after an hour or so without either the money or the receipts. He then resorted to saying he did not know what had happened to the money and persisted with this excuse even when pressed by his supervisor. He finally confessed using the money for personal expenses only after being threatened with having company police brought into the investigation. At that point he signed a statement admitting use of the funds for personal reasons without proper authority.

At the hearing it was developed he used the funds on January 1, intending to repay from his pay check which was due on January 4. He had serious personal financial problems and used the money for an overdue payment on his house and also the payment due on January 1.

This is a clear case of misuse of company funds which can more fairly be characterized as a kind of kiting operation as distinguished from outright theft with no intention of repayment. The circumstances do not support concluding that he did not intend to repay the money. The amount was too large and company accounting procedures too exacting for him to expect not to make good on his misappropriation. It is more reasonable to conclude that the short time from January 1 to 4 was brief enough that he could deal with the pressing problem of his house payments and restore the monies without detection. His problem came with the unexpected accounting on January 4 by his supervisor preparatory to laying off the gang. It is important to note carrier lost no money by claimant's prompt action in making repayment.

This Division looks upon theft as a most serious offense and destructive of the essential trust in the employer-employee relationship. This is particularly true in this case where claimant was in a supervisory position entrusted with company funds needed as a part of his job. In a clear case of theft dismissal is fully warranted but, as reasoned above, we do not believe this is such a case. Claimant's offense showed gross misjudgment, was a serious breach of the trust implicit in his position and calls for stern disciplinary action. Most assuredly such conduct cannot be tolerated by an employer and we certainly do not condone claimant's actions.

At the same time there are mitigating factors as reviewed above. Additionally, it must be noted that claimant's financial situation had so deteriorated that a collection was taken up among his fellow workers for food which was taken to his house. Also he resorted to an employee counselor for guidance in handling his financial affairs. Desperate circumstances sometimes give rise to desperate actions. We do not believe the circumstances of the misdeed itself nor the surrounding factors were given due consideration in imposing the ultimate discipline of dismissal. Thus, we conclude the dismissal action was excessive and should be set aside in favor of considering the period Claimant has been out of service as a disciplinary suspension without pay for time lost.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 discipline was excessive.

A W A R D

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

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