

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24750
Docket Number SG-25139

Tedford E. Schoonover, Referee

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

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

Claim No. 1 - System Docket 1710

Appeal dismissal of L. Gatling

Claim No. 2 - System Docket 1711

Appeal dismissal of N, F. Conklin"

OPINION OF BOARD: This case involves two individuals both of whom worked together as T&T Maintainers. Both were involved in the same incident and both were served with identical charge notices on August 4, 1981. Statement of the charges follows:

- "1. Your failure to perform your assigned duties on Sunday, August 2, 1981, in that you did not replace the nitrogen cylinders protecting the telephone cable at King and Paoli on the Trenton Branch.
2. That you claimed 4 hours, at the overtime rate, on duty time August 2, 1981, when you actually performed no service on August 2, 1981."

On Item 1 we do not agree that this case should be properly characterized as a multiple dispute within the meaning of NRAB Circular No. 1. This case involves two workers who were regularly assigned to work together and their dismissals arose out of the same incident. As stated above, the charge letters against both Claimants were identical. Their dismissal notices were also identical and both were served on the same date. In addition, the appeal letters by the Brotherhood and the denials by the various Carrier officers were identical except for the names of the Claimants. Thus, for all practical purposes this is a single dispute and will be so considered and determined.

On Item 2 it is noted the claim refers simply to Docket 1710 for Gatlin and Docket 1711 for Conklin. Although the claim refers only to the docket numbers such dockets are complete in detailing the nature of the claims and the relief sought by the Brotherhood. Both claims were handled as companion disputes on appeal up through the usual channels to the highest officer designated to handle such matters. At no time during the entire appeals process was there any misunderstanding or doubt as to the contents of each docket. At no time during the appeals process did the Carrier raise the issue of indefiniteness as a procedural bar. Accordingly, we find no merit in this objection and will therefore proceed to consideration of the merits.

The evidence is clear and conclusive in support of the charges. Both Claimants failed to perform their assigned duties on Sunday, August 2, 1981, and both claimed 4 hours at the overtime rate for that date but actually performed no service. There is no basis to gloss over their misdeeds. Theirs was plain dishonesty in filing false claims as a means of getting paid for work not performed. This is clearly theft by misappropriation and severe disciplinary action is fully warranted. Virtually all cases of outright theft of company funds or materials is a dismissable offense. The submission of false time claims, as in this case, is equally serious.

In this case, however, we believe there are factors which call for a reassessment of the dismissal action. In the first place, both had been employed by the Carrier for many years without any prior disciplinary record. Mr. Conklin's record covered a period of 11 years and Gatling's 8 years.

Discovery of their misdeeds was initiated and progressed by J. W. Durst, an employe of some 40 years. He was the C&S Supervisor under whom both Claimants worked. His investigation led to discovery of their false time claims and he testified at their trials. Following their dismissals, however, he is reported to have recommended both Claimants be returned to service. The report on this aspect of the case was included in General Chairman Britcher's identical appeal letters of February 7, 1983 addressed to George Bent, Director of Labor Relations, as follows:

"We understand that on or about December 1, 1981 Mr. Durst wrote to the Manager Labor Relations at 30th Street, Philadelphia, recommending appellant be returned to service, with time lost to count as discipline. It was confirmed this letter was received and was being sent to Superintendent, etc., for their thoughts. Nothing came of this.

Later, on or about January 4, 1982, appellant was told by Office Engineer at Camden, New Jersey, that he would be returned to service, however, that never materialized."

The file does not include any denial of Mr. Durst's recommendation nor does it include any response to the appeal by the Director of Labor Relations. Standing unchallenged it evidences judgment by the Supervisor most directly responsible for the work performance of the Claimants that the dismissals were excessive and should not be allowed to stand. We agree that the Claimants should be returned to service and the time they have been out of service be considered a disciplinary suspension. There is no claim for pay for the time lost and none is contemplated by this decision.

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 Employes involved in this dispute are respectively Carrier and Employes 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

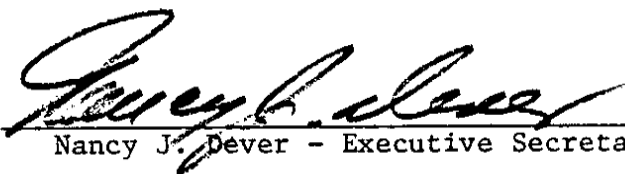
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1984.