

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24792  
Docket Number CL-23966

John B. LaRocco, Referee

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

PARTIES TO DISPUTE:

(  
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9370) that:

Carrier violated the Agreement at Atlanta, Georgia, when on March 26, 1979, it dismissed Mr. B. V. Carnahan from all capacities with Southern Railway Company for a purported act of conduct unbecoming an employee, in that Mr. Carnahan is alleged to have made fraudulent entries on the payroll to substantially benefit himself in a financial manner.

For this violation, the Carrier shall now be required to rescind its prior imposed discipline and return to Mr. Carnahan all the rights and benefits to which he is entitled under the May 1, 1973 Clerks' Agreement and those rights and benefits to which he is also entitled under provisions and interpretations of Appendix C-1 of the Railway Passenger Act of 1970.

OPINION OF BOARD: The Carrier dismissed Claimant on March 26, 1979, for fraudulently obtaining vacation pay while working during January, 1979. Claimant requested a Rule C-1 hearing which was duly held on April 10, 1979. The Carrier subsequently affirmed Claimant's discharge.

Though the Organization asserts that Claimant was deprived of a fair hearing, we have carefully reviewed the lengthy transcript and we conclude that Claimant had ample opportunity to defend himself and his rights were not impaired. (Third Division Award No. 20673 - Edgett). Also, the original discipline was timely imposed since the Carrier did not gain sufficient knowledge of Claimant's alleged fraud until sometime in March, 1979.

At the time of his discharge, Claimant was on an extended leave of absence because he had accepted a position with the National Railroad Passenger Corporation (Amtrak) on February 1, 1979. Inasmuch as Claimant had a residuary employment relationship with the Carrier, the Carrier retained the power to discipline Claimant especially when he allegedly committed the offense when he was still performing active service for the Carrier.

The basic facts underlying the fraud charge are uncontested. Both the Chief Dispatcher and the Carrier's Atlanta Ticket Agent expressly told Claimant that he could not claim one week of working vacation pay on the Carrier's January, 1979 payroll. Nonetheless, Claimant informed the Payroll Department that the pay records for the first half of January should be corrected to show that Claimant worked five days of vacation. When a payroll clerk requested written confirmation, Claimant dispatched a letter to the Payroll Department over the Ticket Agent's signature (followed by odd initials) on January 31, 1979. Claimant sent the letter without the Ticket Agent's knowledge. The letter served

its purpose since Claimant later received vacation pay as well as overtime pay for ostensibly working a vacation in January. During a routine earnings audit in February, a Labor Relation's Analyst discovered that Claimant had received an extraordinarily large amount of pay for January. The high sum served to inflate Claimant's test period average earnings which is used to compute his guaranteed compensation rate pursuant to the Appendix C-1 employee protective conditions. The Analyst contacted the Atlanta Peachtree Terminal and the Payroll Department to ascertain how Claimant received in excess of \$2,100.00 in wages for January, 1979. As the result of the Analyst's inquiry, the Payroll Department discovered the January 31, 1979 correspondence. Claimant admitted that he wrote the letter without authorization.

The record contains substantial evidence that Claimant obtained one week of vacation pay under false pretenses. He deliberately deceived the Carrier despite prior admonitions that he could not report a working vacation in January. Since he signed the January 31, 1979 letter with the Ticket Agent's name followed by misleading initials, Claimant attempted to conceal his fraudulent actions. The Carrier established that Claimant was dishonest and committed conduct unbecoming an employee.

The Organization also contends that the discipline was excessive in light of Claimant's many years of good service. Claimant, the Organization points out, wanted to repay the money he misappropriated from the Carrier. We have carefully weighed Claimant's good work record against the gravity of his offense. This Board does not find any justification for reducing the penalty. Claimant only offered to make restitution after the Carrier discovered his fraud and amassed the evidence against him. In addition, length of service standing alone, is an insufficient mitigation for fraud and defalcation.

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 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. Lever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1984

