

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24825
Docket Number MW-24482

Edward M. Hogan, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Assistant Foreman L. H. Penton for alleged alteration of a 'checkroll' was without just and sufficient cause (System File C-4(13)-LHP/12-39(80-63) G)..

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was dismissed from the service of the Carrier effective June 13, 1980, following a formal investigation held on May 30, 1980, on the charges of "violation of Rule 709 in altering the check roll." The Organization argues that the findings as adduced by the Carrier's hearing officer were without just and sufficient cause in that the evidence presented at the formal investigation did not support the findings as adduced and that the Carrier failed to meet its burden of proof.

The Carrier argues that the record in the instant dispute clearly demonstrates that the Claimant was guilty as charged; that the Carrier has sustained its burden of proof; that the Claimant received a fair and impartial hearing; and that the Claimant admitted that he changed the check rolls. Further, the Carrier argues that this Board should not substitute its judgment for that of the hearing officer, absent evidence of arbitrary, capricious or discriminatory behavior or abuse of managerial discretion. Lastly, the Carrier argues that dishonesty is a dismissable offense.

In April of 1980, the Claimant was assigned as Assistant Foreman on Extra Gang 8584, working in the Greenwood, South Carolina, area. Claimant admits that he erased prior entries on his time sheet for the dates April 16 and April 17 (1980) and substituted 10 hours and 8 hours on the time sheet, respectively. The number of hours for mail allowances and travel time had also been altered. Our review of the record indicates that there may be said to exist a conflict in testimony with respect to the intent of the Claimant. In fact, the Organization in their submission urges us to recognize the record presented us as a case in poor judgment, but not dishonesty.

In this particular case, we cannot agree with the position as advocated by the Organization. It is longstanding policy and precedent of this Division and other divisions of the National Railroad Adjustment Board, that dishonesty, in any form, is an extremely serious offense and that dismissal is not an excessive or unwarranted action. (See Third Division Awards 16170,

13179, and 13250.) Our review of Third Division Award 20182 (Referee Lieberman) indicates a case of a very similar nature to the one presented us here. That Award states, in pertinent part:

"This Board's review of disciplinary action by a Carrier is restricted to first a determination of whether or not there was sufficient probative evidence adduced at the hearing to support the conclusion of guilt, and secondly, whether the discipline imposed by the Carrier was arbitrary, capricious or discriminatory. In this dispute the record is clear that the finding of guilt was supported by uncontroverted evidence and that the discipline imposed, under all the circumstances, was not unwarranted. The Claim must be denied."

Lastly, this Board has consistently held that it will not weigh the credibility of evidence or the witnesses in situations as presented by the record before us. In Third Division Award 21278 (Referee Wallace), this Board stated:

"There is a conflict in the testimony here and the carrier chose to believe the version advanced by Mr. Smith rather than the claimant. We cannot say this was wrong. This Board functions as a reviewing authority and it cannot substitute its version of the facts for that reached by the trier of facts who heard the testimony, observed the demeanor of the witnesses and by its proximity, was entitled to weigh and evaluate the credibility of witnesses. So long as the conclusions reached are based upon substantial evidence in the record they should not be overturned. Here the record provides the required support for the decision that the claimant was absent without permission."

We have long held that dishonesty, in any form, is a dismissable offense and that we cannot substitute our judgment for that of the hearing officer, absent arbitrary, capricious or discriminatory behavior or an abuse of managerial discretion. We find none of these conditions present in the instant case. We are not unmindful of the Claimant's 10 years of service to that of the Carrier. However, in view of the Claimant's admissions at the formal investigation, we find no other alternative than to deny the claim before us.

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 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Devitt - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984