

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24916
Docket Number CL-25188

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Central of Georgia Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9791) that:

Carrier violated the agreement at Andalusia, Alabama, when, on May 12, 1981, it dismissed Mr. L. G. Tubbs from service without pay.

Carrier shall now be required to restore Claimant Tubbs to service with seniority and all other rights unimpaired and compensate him for all time lost.

OPINION OF BOARD: The record shows that Claimant entered Carrier's service on June 5, 1971. On July 27, 1980, he was assigned as Agent-Operator at Union Springs, Alabama. On May 5, 1981, he was instructed to attend an investigation scheduled for 2:00 P.M., May 12, 1981:

"In this investigation you are charged as the Agent at Andalusia, Alabama with mishandling company salvage sale of 44,140 lbs. of wet poultry feed out of SCL 240119, in that regular deposit slip with remittance was not promptly forwarded to depository and Form 1646 with original deposit slip was not promptly forwarded to the Treasurer. This transaction was completed August 11, 1980 and as of April 29, 1981 the provisions of Agent's Manual Instructions 4910-0330 covered above, had not been carried out.

You are also charged with violation of Operating Rule GR-4, carrying out instructions and doing your work efficiently; Rule 1150, obeying instructions, and 1151, regarding collection and remittance or deposit of money.

You may bring with you to this investigation any witnesses and/or representatives you desire in accordance with your current working agreement."

The investigation was conducted as scheduled. A copy of the transcript has been made a part of the record. Following the investigation, Claimant was notified on May 18, 1981, of his dismissal from service.

Agency Manual Instruction 4910-0330, referred to in the letter of charge, reads:

"0330 Reporting Salvage Sales: Salvage Sales Record and Buyer's Receipt (Form 1646) will be used to report sales of salvage made by Agents to Treasurer. At stations where remittance is made direct to the Treasurer, Form 1646 will be prepared and mailed with the remittance. At stations remitting to a depository, regular deposit slip will accompany the remittance to the depository and Form 1646 will be prepared and mailed with original deposit slip to the Treasurer."

Carrier's Operating Rule 1151 reads:

"RULE 1151:

Agents are in charge of the Railway's interest at their stations; of its buildings, sidings, other tracks and ground within the station limits; of the station appliances, equipment; of its accounts and records; of its material and supplies; of all cars at the station except in trains; of the receipt, care, forwarding and delivery of baggage and freight; of the sale of tickets; of the collection of the station revenues; of the remittance or deposit of money; of such disbursements thereof as may be properly authorized, of all station employees and of other employees while at the station, so far as it relates to their conduct or to the station work.

Agents will also have charge of such other matters as may arise in connection with the station management or may be assigned to them by proper authority.

Agents must report to superintendents any matters affecting the interest of the Railway."

In the investigation it was developed that Claimant sold as salvage 44,140 pounds of wet poultry feed. For some reason, check by the buyer, in the amount of \$1,650.00 was made out by the buyer to the Claimant personally. Claimant cashed the check, and claims that the money was stolen from his truck. The contention was made that he sent a personal check to the Carrier on May 11, 1981, the day prior to the investigation; however, investigation by the Carrier's officers on the morning of May 12, 1981, revealed insufficient funds in the bank involved to cover the \$1,650.00 check.

In the investigation Claimant admitted that he did not handle the matter in accordance with the rules.

The record also reveals that Claimant was indicted by Covington County, Andalusia, Alabama, Grand Jury in January, 1982, on three counts of Theft of Property II and one count of theft of Property I, Court Cases CC 82-98, 99, 100, 101, all felonies. Subsequently a plea bargaining arrangement was entered into whereby Claimant entered a plea of guilty to one count, Court Case CC-82-99, Theft of Property II, a felony. The Court ordered Claimant to make full restitution and placed him on five years probation. The other cases, CC-82-98, 100 and 101 were Not Prossed.

The charges against Claimant were established by substantial evidence. He was clearly guilty of mishandling Company funds. There is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

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

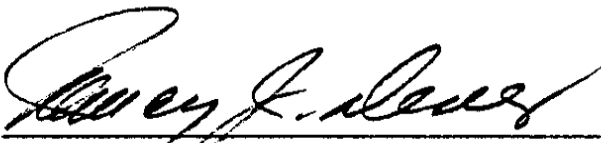
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

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