

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25629
Docket Number MS-26025

John W. Gaines, Referee

(Odell Gatlin

PARTIES TO DISPUTE:

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(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

1. The National Railroad Passenger Corporation acted in an arbitrary, capricious and unjust manner and in violation of Rule 24 among others of the Agreement with the Brotherhood of Railway and Airline Clerks, Allied Services Division, AFL-CIO when it dismissed Mr. Odell Gatlin from service effective February 25, 1983.

2. The Corporation shall now be required to reinstate Mr. Gatlin and to pay him an amount equal to what he could have earned had he not been terminated and to reinstate Mr. Gatlin's seniority had he not been terminated. The Corporation shall also be required to clear Mr. Gatlin's record of any correspondence pertaining to this matter.

OPINION OF BOARD: After an investigative hearing on February 17, 1983, Claimant by notice dated February 25, 1983 was dismissed from service for the offense charged by Carrier as follows:

"On November 17, 1982 you placed a telephone order with the J.C. Penny (sic) Co. using the name of John W. Adam and the 528 E. Locust St. address and attempted to charge this order to the VISA credit card #4024627812734, Mr. Adam's account. This credit information was made available to you on October 24, 1982 when Mr. Adam was an Amtrak Express customer. Therefore you are in violation of N.R.P.C. Rules of Conduct, Rule 'I' which (sic) reads: 'Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the Company will not be subjected (sic) to criticism and loss of good will.'

Clearly, in this dispute the Hearing Officer did not credit Claimant's denials, as against the accumulation of interlinking documentary evidence and corroborative testimony adduced in the showing made by Carrier. It is the Hearing Officer's function to weigh the evidence, not ours to resolve conflicts therein, and consider by observation the witnesses' relative credibility. He had before him substantial evidence of such dishonesty as to render the employee unsuitable for future employment.

This Division in Award 16168 stated:

"Dishonesty, in any form, is a matter of serious concern and dishonesty usually and frequently results in dismissal from the service of a carrier.

"This Board has held on numerous occasions that dismissal from service for dishonest acts is not excessive application of discipline or an abuse of discretion."

We find nothing of an excessive, capricious, abusive, or arbitrary nature under the circumstances of this dismissal.

There is no proper basis for the Board to interfere with the discipline imposed.

Claimant's Ex Parte Submission includes the statement: "(Hearing) Officer D. T. Warning issued his Decision on the date of February 25, 1983, not post-marked nor received by the employee or the organization until March 1, 1983." The statement is indirectly referring to the ten-day rule which limits the time in which the dismissal decision must follow-up after the investigative hearing; the implication of course is that the Carrier's decision was too late when, in actuality, the decision was timely.

The ten-day limitation sets the time frame specifically for the rendering of the notification of dismissal, not for delivery to the party notified. The stamped mail-date markings on material reproduced and submitted by Claimant make it evident on their face that the notification was rendered by Carrier within the required ten days of the investigative hearing.

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. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1985.

