

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25668
Docket Number SG-25770

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Illinois Central Gulf Railroad:

On behalf of Signalman K. D. Lewis, who was dismissed by notice dated June 30, 1983, for restoration to service with all benefits and seniority rights unimpaired and pay for all time lost, for eight hours' pay and expenses for attending the investigation, and for removal of the June 24, 1983 investigation from his personal record. [Carrier File: 135-296-18 Spl. Case No. 417 Sig.]

OPINION OF BOARD: Claimant was dismissed by notice from Carrier dated June 30, 1983. The notice in its entirety reads:

"At the investigation held at Champaign, Illinois, on June 24, 1983, it was determined you violated Rule 'H' and Rule 'I' in the Illinois Central Gulf Railroad Rules for the Maintenance of Way and Structures, when you falsified your May 1983 expense account, Form 1325, on May 11, 1983.

"For your violation you are dismissed from the service of the Illinois Central Gulf Railroad effective with the receipt of this letter. The measure of discipline was based in part on your past personal record.

"Please turn in all Company property to your nearest Supervisor."

During the investigation, held on June 24, Claimant readily admitted to being off work sick on May 11; readily admitted to four entries on May 11, for which he was expecting reimbursement, and which he had made as valid business charges to the May, 1983, expense account form; and, when Carrier later introduced the suspect form in evidence, Claimant readily admitted to the signature appearing thereon being his own, and that the expense account form had been prepared by him. Claimant characterized what he did as not an intentional act in claiming the nonexistent expenses for the day off sick, May 11, but rather that he did so not knowing, not aware of the mistake, not thinking, and simply forgetting, as he variously testified.

Detailed accuracy demanded in filing a business expense report does not admit of lapses and laxity in the procedure. The representations must be made with careful attention so they can individually stand up under close scrutiny, and full responsibility, serious and heavy indeed, is accepted by the filer. On the other hand, among the elements of the offense for spurious entries, it is the falsification by the offender which is needful of being proven, without additional evidence of the offender's willfulness, fraudulent intent, or his particular state of mind on the whole.

The Organization points out the fact that the letter whereby Carrier first charged Claimant with the offense was dated June 16 which does not fall within ten days immediately following May 26 when Claimant turned in his expense account. But the ten days (Rule 35-a) started running certainly no sooner than the date June 8 which is when Claimant's Supervisor furnished the Division Manager's office with the expense account, the point where it was checked for discrepancy against the timeroll, i.e., the point where Carrier could be said to have acquired knowledge of the offense. The charge, made in writing on June 16 as noted, was timely made. This dispute was therefore in no way jeopardized from being properly brought before the Board.

The Transcript of the investigation comes across as commendably brief, straightforward, and to the point. The exchanges in which the parties now engage themselves are over what was not brought forward at the investigation and afterwards. The Organization invites attention to the notably absent timeroll, and likewise notable absence of even one witness called for examination, and also Claimant's omitted copy from Carrier of the eventual Transcript of the proceedings of the investigation. Let us consider, firstly, the force of the expense account.

The authenticity of the expense account and the spuriousness of all entries for May 11 claimed thereon had been so well established by Claimant's own opening testimony that the document took on special status. Immediately it was introduced, the expense account constituted documentary prima facie evidence of the fact of falsification. The investigation was not burdened or prolonged by Carrier thereupon introducing a superfluous timeroll in evidence or presenting witnesses each appearing for an examination which the evidence at hand rendered superfluous.

Carrier in turn points to the fact of the unacceptability of Claimant's rationalization, detailed hereinabove, for falsely adding expense charges where none belonged, and to the fact that the Organization offered only the unacceptable excuse of human error or mistake or, more graphically, honest mistake for the conceded misrepresentation. Nothing more was brought forward. Rationalizing and excusing cannot be taken as effectively rebutting prima facie evidence.

In that general connection, where the conditions were evident as to Carrier's advance access to the timeroll and omission to place it in evidence or call witnesses, the Organization views the Hearing Officer as prejudging the outcome of the investigation, presumably on basis that he kept it brief. No rule violation is alleged and no award is cited viewing these conditions as amounting to a good basis or as good speculation that a case was prejudged. The Hearing Officer had documents at hand going into the investigation which, as the proceedings developed, began to emerge as prima facie evidence of the very fact at issue, but only so long as not rebutted. He obviously had to await what rebutting evidence, if any, to be brought forward, which was solely in the Organization's possession and to which the Hearing Officer had no possible access. Never hearing any effective evidence of that character and, so, having no reason to prolong a prima facie case, the Hearing Officer could reasonably decide to shortly close the investigation. The punctuality of his decision has our endorsement.

While we can, and do, lament the oversight and emphasize our urgings to Carrier in all future instances to expand its distribution list to include more than just providing the General and Local Chairmen of the Organization with copies, we find little or no further recourse we can take at this stage account of Carrier's omission in never supplying Claimant's copy of the Transcript. It passed as an inconsequence, without the element of surprise, or any lack of preparation time or, in broad regard, without prejudice to or deprivation of any procedural rights due Claimant.

Upon basis of the entire record and all the evidence and facts as ably presented to us, we find substantial evidence of Claimant's falsification of his expense account in violation of the rules, and discipline is warranted because of the seriousness of the matter. Permanent dismissal is, however, a severe discipline and, applied under the circumstances of the present infraction, looms as harsh indeed.

Finding the discipline excessive, we will therefore award that Claimant be restored to service with all benefits and seniority rights unimpaired. However, we will not award any compensation for time Claimant may have lost while out of service. Claimant's past record shows a three month suspension, later reduced to six weeks, for a number of offenses one conspicuously being falsification of his expense account. Allegedly earlier he had received oral and written warnings, presumably regarding prior improper expense accounts. So the present loss of pay falls in as progressive discipline to previous discipline on this subject, alerting Claimant to an especial seriousness expected of him in reporting business expenses incurred by him.

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 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 Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1985.