

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25836
Docket Number TD-25460

Nicholas Duda, Jr., Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
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(Seaboard System Railroad

STATEMENT OF CLAIM:

" . . . that [Train Dispatcher] Mr. Pittman now be reinstated to his former train dispatcher position with all seniority rights and paid for each day lost from his assignment at rate applicable to same and have his personal record cleared of this incident."

OPINION OF BOARD: The Montgomery Side Train Dispatcher works in the former Division Office Building in Waycross, Georgia. A different area of the same building contains the offices of the Assistant Chief Clerk.

Claimant, a Train Dispatcher, was working as Montgomery Side Train Dispatcher from 4:00 P.M. until 12:00 midnight on Saturday, February 19, 1983. At about 10:05 P.M. that evening, Assistant Chief Clerk Lee returned to his office. He discovered Claimant leaving the Assistant Chief Clerk's office. Mr. Lee immediately confronted Claimant. Claimant denied that he had been in any of the offices and left. Shortly later that evening, Claimant was summoned for further interrogation. After further questioning, Claimant ultimately admitted that he used a hacksaw blade to "jimmy" open the lock on the door to the Assistant Chief Clerk's office. He also said he had entered the office and was looking at business papers in the office when he heard Mr. Lee return unexpectedly; Claimant attempted to leave by another door without being observed, as Mr. Lee entered the office by the jimmied door. However, when Mr. Lee turned and went back out the door, he saw Claimant leaving by the second door.

A formal investigation was held on February 28, 1983:

"To develop the facts and place responsibility, if any, in connection with your forced and unauthorized entry into the office of Assistant Chief Clerk B. J. Lee . . . at approximately 10:05 P.M., Saturday, February 19, 1983....

You are charged with violation of that portion of Operating Rule G-1 relating to disloyalty and dishonesty, Rules 11, 702, 707, 708, 720 and 730."

By letter dated March 22, 1983, Carrier notified Claimant that the investigation established that Claimant had left his duty station unattended and went to Mr. Lee's office where he forced the door, entered and went through various papers. (Claimant alleged that he sought information pertaining to plans of the Company in connection with moving various dispatching duties and people.)

In the Carrier's opinion, that incident involved a failure to comply with Operating Rules 702, 708 and that portion of Operating Rule G-1 relating to "disloyalty, dishonesty, making false statements and concealing facts concerning matters under investigation". For the Rule violations, the Carrier dismissed Claimant from its service.

The Organization's position is twofold. First, neither Operating Rule 702 nor 708 was violated. Second, in respect to the alleged violation of Rule G-1, Claimant's misdeed was a "misdemeanor" which Carrier improperly characterized as "disloyal and dishonest" to justify dismissal action under G-1. The Organization says:

"He stole nothing. He destroyed nothing. He betrayed no confidence. Neither did he make a false statement or conceal the facts at his investigation on February 28, 1983. He held nothing back. He did enter an office not his, for the purpose of obtaining information . . . he had no business there and certainly the matter cannot be ignored

"The leap from a five day suspension [imposed 11 years earlier] to dismissal, for a harmless and insignificant act of poor judgment is stunning. The Board has the capability of adjusting the discipline to that which is reasonable, just, and commensurate with the offense and the employee's record."

The Rules involved in this case are as follows:

Operating Rule 702:

"702. Employees must conduct themselves at all times in a manner that will not bring discredit to their fellow employees or subject the Railroad to criticism or loss of good will."

Operating Rule 708:

"708. Employees must not absent themselves from duty, or change off with others for a tour of duty, or part of a tour of duty, without first obtaining permission from the proper officer. When leave of absence is desired, it must be requested in ample time to protect the vacancy."

The pertinent part of Rule G-1 states:

"G-1. Disloyalty, dishonesty, . . . making false statement or concealing facts concerning matters under investigation will subject the offender to dismissal."

Clearly Claimant was improperly absent from duty concurrent with his disloyal and dishonest breaking into and entering Mr. Lee's office. It was also clear that he initially attempted to conceal material facts when first confronted and during the beginning of the interrogation. It may be true, as suggested by the Organization, that the evidence concerning violation of Rule 702 may be less strong than the evidence of violation of Rules 708 and G-1.

However, we note that at the investigation, Claimant admitted that he had not complied with either Operating Rule G-1, 702, or 708. This Board finds that there was substantial and sufficient evidence in the record to support the Carrier's finding that Claimant had violated all three of the aforementioned Operating Rules.

The Organization requests that this Board modify the discipline imposed as had occurred in the many decisions submitted by the Organization. The Carrier also submitted many decisions in which the Board had refused to modify the decision imposed by a Carrier.

Claimant, hired in 1959, had many years of service. Long service has often been a factor considered by the Board in evaluating whether to mitigate the level of discipline imposed by a Carrier.

The Board has reviewed all of the cases submitted by the Parties. The vast majority of the cases having modification fall into the areas of insubordination, absenteeism, failure to properly perform work, etc., charges basically in the area of negligence or action without premeditation and not of a heinous nature. Most of the cases submitted by the Carrier in which the Board refused modification concerned Employee loyalty and dishonesty and other serious misconduct.

One of the decisions submitted by the Organization (Award No. 16065) contained the following statement by the Board:

"In determining whether the amount of discipline imposed by Carrier was unreasonable, we start from the premise that (except in cases of discharge which is warranted by serious offenses or by incorrigibility of an offending employee), the purpose of discipline is not primarily punitive, but corrective; we will not substitute our judgment as to what amount of discipline is necessary to try to correct the guilty Employee's future conduct, so long as the Carrier's judgment is within reason."

The case at hand does concern a very serious offense. It was not of the quality of a "misdemeanor". Claimant intentionally broke into and entered his Employer's offices. The action was premeditated; he admitted that he had brought the hacksaw from his home about a week before for the express purpose of breaking in. In one sense he did not steal anything, but that was not for lack of trying. At the very least he examined private information and was in the process of seeking specific private information when Mr. Lee unexpectedly appeared after 10:00 P.M. on a Saturday evening.

This is not a situation in which the Carrier is attempting to correct behavior. Claimant knew full well that the act he contemplated was serious misconduct. Frankly the Board sympathizes with Claimant who was discharged after many years of service. Perhaps the Board would not itself have imposed dismissal under these circumstances, but it will not attempt to substitute its judgment for that of the Carrier whose decision cannot be found to be unreasonable or an abuse of discretion and excessive.

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. Dover - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1986.

