

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25993  
Docket Number CL-24984

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employes  
(  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-9703) that:

(1) Carrier violated the terms of the parties' Agreement which became effective May 15, 1972, particularly Rule 21, when it dismissed from service Mr. B. B. Price, Chief Rate Clerk at the Milwaukee, Wisconsin Freight Office account of investigation held on October 5, 1981, and

(2) Carrier shall be required to reinstate Mr. B. B. Price with all rights unimpaired and compensate him for all wage and benefit losses sustained commencing September 25, 1981, the date first held out of service and continuing until the instant violation is corrected."

OPINION OF BOARD: Claimant was held out of service beginning September 25, 1981, and dismissed by Carrier on October 8, 1981, on basis of an intervening investigative Hearing. Claimant's capacity was as a full time Chief Rate Clerk, having among his responsibilities to make up the charges appearing on freight bills by which Carrier collects from its shippers for services rendered.

The offense charged was that Claimant, in a job outside his employment with Carrier, was privately paid to re-figure bills due for payment by shippers, including Carrier's billings. Any overcharges spotted were then presented as refund claims.

On occasion, Claimant found and compiled overcharges present in Carrier's freight billings that he had prepared, consequently resulting in refund claims against Carrier.

Carrier is not required to countenance its Employees in the hire of an outside concern with opposing interests. The practice cannot be overlooked and warrants discipline.

It was not substantiated that Claimant was taking the time he was devoting to the private work out of Company work hours. The overriding factor is Claimant's Company loyalty is not to be shared at any hour with outside clientele seeking to reduce Company revenues.

However, on balance, the imposed penalty is deemed excessive; his permanent dismissal is an extreme and severe penalty.

Instead, we will award to Claimant reinstatement with all his rights unimpaired, but with no compensation for backpay or benefit losses. Any fair reading of this record serves as clear warning that Claimant is expected to desist from private work that is performed during Claimant's continued employment and that could prove to the detriment of 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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois this 26th day of March 1986.

