

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26189
Docket Number CL-26173

Peter R. Meyers, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Exployes
(
(The Denver and Rio Grande Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood
(GL-9981) that:

1. Carrier acted in an arbitrary and unjust manner, violating Rule 21 and other related rules of the Agreement, when it dismissed Mr. C. L. Susemihl from service effective February 27, 1984, following an investigation held on February 21, 1984.

2. Carrier shall now be required to return Mr. C. L. Susemihl to service, clearing his record of this investigation, and compensate him for all time lost, beginning February 27, 1984, and continuing until corrected."

OPINION OF BOARD: Claimant was a clerical employee of the Carrier headquartered at Grand Junction, Colorado. Claimant was brought to Denver, Colorado, to train for a position in a newly created Centralized Crew Dispatching Office at Carrier's General Office Building. While training in Denver, Claimant was on an Expense Account. On February 15, 1984, shortly after his return to Grand Junction, Claimant was notified to appear at an Investigation on charges that he had falsified his Expense Reports while in Denver from January 23 through 26, 1984. The Investigation was conducted on February 21, 1984; as a result of the Investigation, Claimant was dismissed from service. The Organization then filed a Claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in this case, and it finds that the record does not contain sufficient evidence to sustain the charge that the Claimant was guilty of dishonesty when he submitted receipts for reimbursement and double-billed in the amount of \$29.11 in meal costs on an Expense Report. Although the Claimant had filed Expense Reports before and was familiar with the procedure, there is still insufficient evidence that he knowingly double-billed the \$29.11 in order to obtain additional monies from the Carrier. Although this Board will not second-guess a Hearing Officer, we cannot allow Findings that are not based on sufficient evidence. In this case, although it is clear the Claimant received an additional \$29.11, it is not at all clear that he was dishonest or knowingly attempted to obtain the funds. Hence, the Findings of the Hearing Officer was unreasonable, and we must set it aside.

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

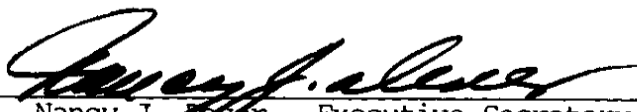
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois this 24th day of November 1986.