

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26396

Docket Number CL-26768

Edwin H. Benn, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10040) that:

(a) Carrier violated the rules of the current Clerks' Agreement at Richmond, California, when it removed Mr. A. P. Esqueda from service on April 27, 1984, as a result of a formal investigation held on April 11, 1984, and

(b) Mr. A. P. Esqueda shall now be returned to Carrier service and paid for all loss of wages and benefits commencing on or about April 27, 1984."

OPINION OF BOARD: As a result of the Carrier's March 26, 1984, audit, Claimant was charged with having deliberately falsified Unemployment Compensation Claims for January 5, 10, 26 and February 20, 1984. After the Hearing on April 11, 1984, the Claimant was dismissed from service.

Claimant testified that he did not complete the records necessary for making the Unemployment Claims, but that one of several clerks employed by the Carrier performed that task. However, Claimant testified that the clerk merely recorded his responses to questions. Claimant signed the forms certifying that the information was correct. Claimant further testified that when giving information concerning the Unemployment Claim Forms to the clerks, he does not always have the accurate information concerning when he actually worked, but gives information based upon his best knowledge.

For the same reasons set forth in Third Division Award 26395, we reject the Organization's argument that the Investigation was untimely within the meaning of Rule 24-A. The Investigation was held within 20 days of the Carrier's discovery through its audit performed on March 26, 1984, that discrepancies existed on the dates at issue. Under the facts of this case, the Investigation was timely held.

Similarly, as in Third Division Award 26395, we do not find that substantial evidence exists in this record to support the Carrier's determination that Claimant engaged in a "deliberate" falsification of his Unemployment Claims at the time those Claims were filed. At most, the

record shows that Claimant was quite careless in providing the information concerning his actual dates of work or receipt of holiday pay. The fact that a clerk filled out the Unemployment Claim Form does not excuse Claimant's conduct since the clerk was acting upon information supplied by Claimant and Claimant thereafter was given the opportunity to review, correct and sign the Claim form.

As in Third Division Award 26395, Claimant took no timely action to correct his mistakes when he realized or should have realized that he was receiving double payments. As of that point, when Claimant knew or should have known of his receipt of double payments, Claimant's activities constituted deliberate action. Similarly, no real explanation is given for the holiday pay claim for February 20, 1984, aside from that of an innocent mistake.

Under the circumstances of this case, we also find that the penalty of discharge was excessive. Therefore, we shall award that Claimant be returned to service with seniority unimpaired, but without compensation for time lost.

In light of the above, it is unnecessary to address the issue raised by the parties concerning the effect of Claimant's refusal to accept the Carrier's leniency offer.

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

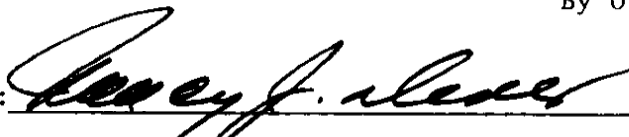
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1987.