

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26400
Docket Number SG-26908

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: "Claim in behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Missouri-Kansas-Texas Railroad Company:

On behalf of M. R. Myers for reinstatement with all time lost, including punitive and holiday pay, and all rights restored account he was excessively disciplined when dismissed by the Carrier in letter of August 7, 1984. Carrier file 2619."

OPINION OF BOARD: In seeking reimbursement for expenses while assigned in Dallas and in Houston, Texas, Claimant submitted receipts for lodgings which contained little or no identification of the supplier of the services. Carrier reimbursed the expenses but later scheduled an investigation and repeatedly requested additional information including addresses and telephone numbers of the suppliers. Claimant delayed furnishing the information and finally took the position that while in Dallas he stayed with a friend and paid rent to, and received receipts from, that friend. He also stated this arrangement was known to his Supervisor. He could not remember the name of the Houston motel although he had stayed there on two separate occasions.

At Investigation it was shown that the friend with whom he claims to have roomed in Dallas was unknown at the building. Claimant then contended the apartment was rented in the name of his friend's girl friend. It also appeared the apartment complex had had a different name from that on the receipts for over four years.

Subsequent to the Investigation Carrier obtained additional information regarding the Houston receipts. It furnished this to the Organization and urges this Board to consider it now. Although this information may not have been available prior to the Investigation because of Claimant's failure to disclose in a timely fashion we conclude we should not deviate from our traditional position "that evidence submitted after the conclusion of an investigation is inadmissible" (Third Division Award 20765).

After the Investigation Claimant was notified of his dismissal by Engineer - Communications and Signals Phillips.

On October 2, 1984, the General Chairman appealed to the Assistant Vice President. His letter of appeal shows copies to Phillips and others. In a February, 1985, letter to Carrier the General Chairman requested copies of certain letters as he had misplaced his copies, including his letter to Phillips. Carrier furnished copies of what it had but had no letter to Phillips. Since then Carrier has contended Phillips' decision was not properly appealed. We see no merit to that position. The letter of Appeal was clearly received by Carrier. That is not disputed. That letter shows Phillips was copied. The General Chairman having misplaced his copy affords us no reason to speculate the copy to Phillips was not mailed or received. That copy constituted notice to Phillips.

The sketchy, incomplete information Claimant submitted and his dilatory tactics in furnishing additional facts to support his expense vouchers made it difficult for Carrier to determine their validity. This raised legitimate questions on Carrier's part and contributed to a large extent in placing Claimant in the position in which he now finds himself. Nevertheless we conclude the ultimate penalty of dismissal was excessive and shall require that Claimant be reinstated to his position with seniority unimpaired, but with no compensation for loss of earnings.

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 Employee involved in this dispute are respectively Carrier and Employee 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.