

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26501
Docket Number MW-26499

Peter R. Meyers, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Material Engineer R. T. Rullo for alleged 'violation of Conrail Order AD 0.01' was without just and sufficient cause, on the basis of unproven charges and excessive (System Docket CR-858-D).

2. The claimant's record shall be cleared of the charges leveled against him, he shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: At the time of the incident at issue, Claimant was employed as a Material Engineer by the Carrier in its Allegheny "B" Division. Claimant was notified to attend a formal Investigation in connection with the following charges:

"1. Ordering extra trucks during the period May through December 1982 from Wood Chips, Inc. of Avis, Pa., and instructing them to submit falsified invoices to Conrail to cover the cost of the trucks.

2. Instructing Wood Chips, Inc. in December 1981 and June 1982 to purchase five chain saws and a brush cutter and to submit falsified invoices to Conrail to cover the cost of the purchased items.

3. Selling your personal automobile, a 1973 Pontiac, in November 1981 to Mr. Jeff McGuire of Wood Chips, Inc., and accepting personal welding repairs on your boat trailer by Mr. McGuire in December 1983 - Violation of Conrail Policy AD 0.01, paragraph 5.7.

4. Permitting individuals to remove Conrail material from Conrail property during the period March 1982 through March 1983 without proper authorization.

The foregoing offenses represent inappropriate conduct on your part in violation of Conrail Order AD 0.01, specifically paragraphs 4.0, 4.1, 4.1.1, 4.1.2 and 5.4.1, President Reed's letter of September 16, 1981.

The Hearing was held as scheduled on April 5, 1984. As a result of the Investigation, Claimant was dismissed from Carrier's service. The Organization thereafter filed a Claim on Claimant's behalf challenging his dismissal."

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant acted improperly and in violation of Carrier orders. However, the record also establishes that the Claimant acted only as instructed by his Superiors; and there is no evidence that Claimant was dishonest or acted with wrongful intent. The billing procedures at issue were already in use when the Claimant was promoted to Material Engineer; and although the Claimant violated the order and subjected himself to discipline, he was merely following the procedures that he had been told to follow by his Superiors, and he acted with no wrongful intent.

Consequently, this Board finds that the Claim must be sustained in part; and the Claimant must be returned to service, although without back pay. It was unreasonable for the Carrier to impose a dismissal on the Claimant for the offense since he had no bad motives and was merely following orders from his Superiors.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

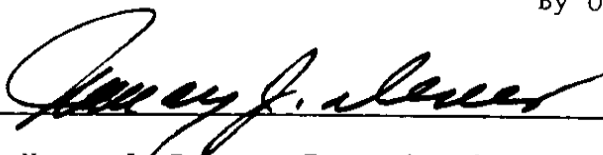
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.