

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26533
Docket Number MW-26928

Edwin H. Benn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company

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

(1) The dismissal of Track Inspector S. Bishop, Jr. for alleged responsibility for irregularities in his personal expense account statements in alleged violation of General Notice, General Rules 'B' and 'E' and General Regulations 700 and 704 during the 63-month period ending in April 1984, was excessive and in violation of the Agreement (System File D-16/013-210-B).

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

OPINION OF BOARD: Claimant, a Track Inspector with over 37 years of service, was charged by letter dated September 25, 1984, concerning irregularities in his personal expense account statements during a 63 month period ending April 1984. Hearing was held on October 9, 1984. By letter dated October 18, 1984, Claimant was dismissed from service.

The record reveals that Claimant admitted to the filing of false lodging and meal claims on his monthly expense accounts. Specifically, during the period February 1979 through April 1984, Claimant submitted lodging receipts signed by his daughter or a "fictitious friend", in some instances for a fictitious place of lodging when, in fact, Claimant did not incur the reported expenses. Claimant further admitted that he submitted false reports for meal reimbursements. It appears from the record that the total amount involved was approximately \$13,000. Claimant testified:

"Q. Basically then, from February 1979 through April 1984 lodging receipts showing on the expense accounts that you were residing at Hobdey or Holley House in Shoshone are false?

A. That's correct.

* * *

Q. The evening meal and the breakfast meal?

A. They are false. They were taken off a menu of about what I would have eaten if I had stayed there."

The Organization has raised a series of procedural issues that we find lacking in merit. First, we find the charges to be sufficiently precise within the meaning of Rule 48(c) so as to inform Claimant of the nature of the allegations against him and to permit Claimant the ability to prepare his defense. Second, there is no basis for a conclusion that the charges were not brought in a timely fashion. The Carrier obtained information from Claimant's ex-son-in-law on June 16 and 22, 1984, that Claimant was engaged in the alleged misconduct which prompted an audit that was submitted on September 19, 1984. Charges issued on September 25, 1984, and were therefore within the 30 day time limit from the time the Carrier gained knowledge of the misconduct by virtue of the results of the audit as required by Rule 48(a). There is no evidence to suggest that the Carrier committed any undue delay in bringing the charges or conducting the audit, especially in light of the nature of the source of the information and the fact that after the information was given to the Carrier, Claimant's ex-son-in-law could not be contacted. The record suggests that the Carrier proceeded cautiously and in similar circumstances we have found charges resulting from such conduct as being brought in a timely fashion. See Third Division Award 26155. Third, we find no fault with the Carrier's removal of Claimant from service pending the Hearing. The violations alleged were sufficiently serious within the meaning of Rule 48(o) to permit such action. Finally, from our review of the record and the conduct of the Hearing, we find no other violations of a procedural nature that we can consider to be prejudicial.

With respect to the merits, clearly there is substantial evidence in the record to support the Carrier's determination that discipline was warranted. Claimant admitted to the false reporting of expenses not actually incurred. Claimant's actions constitute dishonest conduct within the prohibition of Rule 700. We find no merit to the argument that Claimant's actions were condoned by the Carrier. There is no evidence to show that the Carrier had knowledge prior to the time the matter was brought to its attention that Claimant was engaging in the practice with which he was charged. The evidence alluded to by the Organization wherein a Supervisor once instructed Claimant to make sure his requests were legitimate does not amount to such a showing. Nor can we accept Claimant's assertion that he only claimed amounts of money to offset the mileage expense he incurred on a daily basis so as to permit him to be with his ill wife and that he tried not to charge more than what he would have received if he actually stayed in Shoshone. There is no evidence that Claimant brought those alleged special needs to the Carrier's attention and we find no basis in this record to set aside the Carrier's rejection of those alleged mitigating circumstances.

Finally, we cannot say that the Carrier's action in assessing dismissal was arbitrary or capricious. Claimant's actions were of a nature to justify dismissal. See Third Division Awards 26155, 26152. Claimant's lengthy seniority cannot change the result. It is regrettable that an employee with such a long period of service is being dismissed, but such length of service cannot detract from the gravity of the proven and admitted misconduct.

In light of the above, it is unnecessary for us to address the Carrier's arguments concerning leniency.

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;

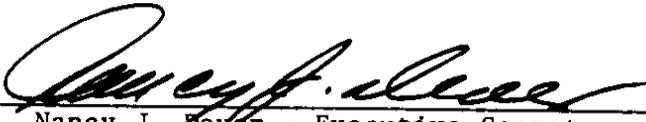
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 30th day of September 1987.