

The Third Division consisted of the regular members and in addition Referee Jack Warshaw when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Oklahoma, Kansas and Texas Railroad Company

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

(1) The dismissal of B&B Foreman E. O. Kirkes for alleged violation of the numerous rules cited within the May 8, 1986 Notice of Hearing, was excessive, unduly harsh, an abuse of discretion by the Carrier and in violation of the Agreement (System File OKT-D-1225).

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

After an Investigation on the property into charges of absenteeism without authority, falsifying payroll, unauthorized use of company truck and equipment, taking money on company credit cards, disposing of company tools, being quarrelsome, dishonest, negligent and using threats to obtain gifts from employees under his Supervision, the Claimant was found guilty as charged and was dismissed from the Carrier's service.

In both its Submissions to this Board, the Organization contends that the Carrier committed several procedural errors relating to the time limit provisions of the Agreement in its handling of this case. The Organization also raised questions concerning the credibility findings made by the Carrier.

The Board notes that in its processing of the Claim on the property the sole issue presented by the Organization was whether the Carrier's finding as to the Claimant's guilt was adequately supported by the evidence adduced at the Investigation. This Board has long held that it will not consider any issues which were not previously presented on the property. (Third Division Awards 21463, 21882, 24934, 25251.) Accordingly, the alleged procedural deficiencies of the Carrier in this matter will not be reviewed by the Board.

The Board has also held that credibility issues are resolved by the Hearing Officer and not the Board. (Third Division Awards 21921, 25134, 25102, 24991.)

As there was substantial probative evidence to support the Carrier's determination concerning the Claimant's culpability of serious offenses, including several admissions by the Claimant, the discipline assessed was not unreasonable and will not be disturbed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Nevers - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1988.