

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

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10157) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Los Angeles, California when it removed Mr. D. B. Arthur from service as a result of a formal investigation held on September 6, 1985, and

(b) Mr. D. B. Arthur shall now be returned to Carrier service and paid for all loss of wages and benefits commencing on September 17, 1985, and

(c) Any reference to the charges and formal investigation held on September 6, 1985, shall now be removed from Mr. D. B. Arthur's personal record as a result of such violation of Agreement rules."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 were given due notice of hearing thereon.

When this Claim arose, Claimant held no regular assignment and, therefore, was an off-in-force-reduction employee. His seniority date was October 24, 1979, on the Los Angeles Division Station Department Seniority District.

On July 29, 1985, Claimant filed a grievance on his own behalf with the Superintendent wherein he alleged that a Carrier official had violated certain rules of the Agreement by performing clerical functions outside the scope of his responsibilities. To support his claim, Claimant attached eleven printouts of car reports normally kept within the computer system of the Carrier which allegedly bore the initials of the officer.

On August 7, 1985, the Carrier issued to Claimant a Notice of Investigation citing his "alleged unauthorized use and disclosure of Carrier records, use of supplies and equipment in that (he) used Carrier equipment to obtain and reproduce records on Carrier stationery for personal and/or other use as furnished by (Claimant) attached to a document dated July 29, 1985, addressed to Mr. J. L. Fields, . . ."

A formal Investigation followed and thereafter the Carrier advised Claimant that he was being removed from service for violation of Rules 1, 2, 14, 15, 17, 20 and 21 (e) of the General Rules for the Guidance of Employees, Form 2626 Standard.

Throughout the record, Claimant admits that during his lunch break on the day in question in July, 1985, he pulled the car records maintained by the Carrier from the computer, copied them on the Carrier machine at the Watson Yard Office, and later removed them from the property and used them to substantiate his grievance. The Board finds based on these admissions by the Claimant, as well as other evidence contained in the record, that the Claimant violated the Rules cited previously.

Having found the Claimant in violation of the Rules as charged, the Board must next consider whether the extreme penalty of discharge is appropriate. It is well established that this Board will not set aside discipline levied by a Carrier unless we determine it to be unreasonable, arbitrary or capricious.

From the instance when the Claimant was first questioned by a Supervisor shortly after filing his claim and continuing through the time spanning the record, the Claimant has maintained that the sole motive underlying his removal and copying of Carrier documents was to reveal a rule violation by an official of the Carrier. That Claimant argues that because he submitted the documents to the Carrier as an attachment to his claim soon after he took them supports this contention. This action also fortifies the Claimant's purported assumption, albeit erroneous, that use of the car records to substantiate a claim constituted a business reason and, therefore, that his use of them was permissible under Carrier Rules. If the Claimant's assumption were otherwise, he would have been flagrantly inviting discipline by submitting the documents to the Carrier who until receiving them from the Claimant was unaware that they had been improperly taken.

The Board is convinced that the Claimant's driving motivation was to police the Agreement. Moreover, Claimant did not understand that by removing the records from the computer and attaching them to his claim he was, in fact, appropriating Carrier information. Further, the Claimant was candid with Carrier officers about the disputed activities both prior to the Investigation and during it. Given these circumstances, the Board concludes that severe discipline is warranted but the penalty of discharge is excessive.

We will award that Claimant be restored to service with seniority and all other rights unimpaired and that the time withheld from service be treated as a suspension. No monetary compensation will be awarded.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1989.