

The Third Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10205) that:

CLAIM NO. 1:

- (a) Carrier violated the Agreement at Chicago, Illinois, when it assessed the personal record of T. H. Nelson with twenty (20) demerits as result of formal investigation held on June 27, 1986, and
- (b) Carrier shall now expunge the twenty (20) demerits and all relating correspondence from the personal record of T. H. Nelson.

CLAIM NO. 2:

- (a) Carrier violated the Agreement at Chicago, Illinois, by assessing the personal record of T. H. Nelson with thirty (30) demerits as result of formal investigation held on July 24, 1986, and
- (b) Carrier shall now expunge the thirty demerits and all relating correspondence from the personal record of T. H. Nelson.

CLAIM NO. 3:

- (a) Carrier violated the Agreement at Chicago, Illinois, when it removed T. H. Nelson from service as result of formal investigation held on July 25, 1986, and
- (b) T. H. Nelson shall now be reinstated to Carrier's service with all rights unimpaired and compensated for all time lost from August 14, 1986, forward.

In accordance with Circular No. 1 of October 10, 1934, as amended, which was issued by the Board, the claims presented have been combined into one submission. Claims 1 and 2 are for the removal of Carrier imposed discipline arising from alleged incidents and investigated on June 27 and July 24, 1986, respectively; Claim No. 3 protests the discharge of T. H. Nelson which resulted from investigation held on July 25, 1986."

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 waived right of appearance at hearing thereon.

The docket herein consists of three disputes handled separately on the property and combined into one submission to the Board, resulting in a rather voluminous record. At the time of the occurrences giving rise to the disputes herein, Claimant, with seniority date of September 27, 1973, was assigned to a Rate Clerk position in Carrier's Customer Service Center, Chicago, Illinois.

Claim No. 1 involves 20 demerits assessed against Claimant's record following a formal Investigation conducted on June 27, 1986, in which Claimant was charged with allegedly being asleep on duty and indifference to duty on June 5, 1986. A copy of the transcript of the Investigation conducted on June 27, 1986, has been made a part of the record. Upon review, we find that none of Claimant's Agreement rights was violated. There was substantial evidence from two witnesses in the Investigation that Claimant was asleep while on duty at approximately 11:30 A.M. on June 5, 1986. Sleeping on duty is considered a serious offense, often resulting in dismissal from service. The discipline assessed of twenty demerits was certainly not excessive or an abuse of discretion. The contention that Claimant was "resting his eyes" is not persuasive. Claim No. 1 will be denied.

Claim No. 2 involves 30 demerits assessed against Claimant's record following an Investigation conducted on July 24, 1986, in which Claimant was charged with allegedly being insubordinate, quarrelsome, and vicious to the Office Manager at 7:15 A.M., on July 11, 1986, in the use of profane language during a telephone conversation. A copy of the transcript of the Investigation conducted on July 24, 1986, has been made a part of the record. We find that the Investigation was properly conducted and that none of Claimant's Agreement rights was violated. The Claimant, the Office Manager, and Carrier's Regional Manager of Customer Service testified in the Investigation. In the Investigation some question was raised by Claimant's representative as to the order in which witnesses would testify. The Board has been cited no rule on this issue and, in the absence of a rule, we consider that in on-property disciplinary hearings it is the prerogative of the hearing officer to determine the order in which witnesses will testify. It has been held in numerous Awards that on-property disciplinary hearings are not court proceedings; that strict rules of evidence do not apply, nor is the burden of proof the same. There must be substantial evidence in support of the charge. The "substantial evidence" rule was set forth by the Supreme Court of the United States as:

"Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (Consol. Ed. Co. vs Labor Board 305 U.S., 197, 229.)

We have reviewed the evidence adduced at the Investigation of July 24, 1986, and find substantial evidence by Carrier's Office Manager and the Regional Manager of Customer Service in support of the charge against the Claimant. There were conflicts between the testimony of Claimant and the other witnesses. However, it is well settled that this Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing officer.

On our review of the record we find no proper basis to disturb the discipline imposed of 30 demerits. Claim No. 2 will be denied.

Claim No. 3 involves the dismissal of Claimant from service on August 18, 1986, following a formal Investigation conducted on July 25, 1986, in which Claimant was charged with the misuse of Carrier telephones in making personal long distance calls at Carrier expense on July 7, 8, 9, 10, 14, 15, and 17, 1986, and failure to follow instructions on personal inbound calls that he received on July 8, 9, 14, 15, and 17, 1986, at Carrier expense. We have reviewed the transcript of the investigation conducted on July 25, 1986, and find substantial evidence in support of the charges against the Claimant. The record is clear that Claimant did use Carrier telephones in violation of instructions and without permission of supervisory personnel. The record also shows that Claimant had previously been cautioned or warned concerning unauthorized and improper use of Carrier telephones. Severe discipline was warranted and, considering Claimant's prior disciplinary record, dismissal from service was warranted. Claim No. 3 will be denied.

The denial of Claim No. 3 actually results in Claim Nos. 1 and 2 being moot, but as the claims were handled separately on the property, we consider it proper to decide them separately at this level.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1989.