

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29733
Docket No. MW-29753
93-3-91-3-108

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Elgin, Joliet and Eastern Railway Company

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

- (1) The dismissal of Roadway Machine Operator R. L. Northern for alleged violation of General Rule F3 was arbitrary, capricious and on the basis of unproven charges (System File DG-542-90/TM-9-90).
- (2) The Claimant shall be reinstated in the Carrier's service with seniority and all other rights unimpaired; he shall have his record cleared of the charge leveled against him, and he shall be compensated for all wage 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 employe or employes involved in this dispute are respectively carrier and employe 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.

Claimant entered Carrier's service on June 17, 1969. At the time germane to this dispute, Claimant was employed as a machine operator. In January, 1987, Claimant was furloughed as a result of a force reduction by the Carrier. While on furlough, the Claimant filed claims for unemployment compensation under the provisions of the Unemployment Insurance Benefits payable by the United States Railroad Retirement Board.

Subsequently, in December 1989, Carrier learned through a newspaper article that Claimant had been charged with illegally collecting unemployment insurance benefits from the Railroad

Retirement Board. Upon investigation of this newspaper article, Carrier learned that the United States Attorney had, in fact, filed charges against Claimant for allegedly making false claims for unemployment insurance benefits. As a result of these charges, Claimant, with the assistance of his private attorney, voluntarily and of his own accord, filed with the United States District Court for the Northern District of Indiana, Hammond Division, a Petition To Enter a Plea of Guilty in which he acknowledged, with the assistance and advice of his Counsel, that he would plead guilty to the charge as made by the U. S. Attorney and that he would, and did, make restitution to the Railroad Retirement Board of the full amount of its loss. The United States District Court accepted the plea of Guilty as entered by Claimant; placed him on probation for a period of one (1) year; required him to make full restitution and ordered him to pay a special assessment of \$25.00. This action of the District Court occurred on February 13, 1990.

In the meantime, Carrier, by notice dated January 16, 1990, ordered Claimant to appear for an investigatory hearing on January 19, 1990, on a charge of violation of General Rule F.3. of the General Regulations governing Maintenance of Way Employees. The hearing was held as scheduled at which time Claimant was present, vigorously represented and testified on his own behalf. Following completion of the hearing, Claimant was notified by Carrier on January 25, 1990, that he was dismissed from service. Subsequent appeals were made on Claimant's behalf and were argued extensively during the on-property handling of this dispute. Inasmuch as the parties were unable to reach a satisfactory resolution of this dispute during the on-property handling, it has come to this Board for final and binding adjudication.

During the on-property handling of this dispute and continuing before this Board, both parties have raised a number of procedural arguments and contentions. This Board has reviewed and studied the several procedural arguments and does not find any of them to be dispositive of the issues in this case. They are, without further comment, dismissed.

General Rule F.3. reads, in pertinent part, as follows:

"Employees who are ... dishonest ... will not be retained in the service."

On the merits of this case, we find a situation in which an employee with a considerable amount of seniority has admitted both to the Carrier and to the District Court that he did, in fact, "... knowingly and willfully did make, or cause to be made, a false claim, that is, a Form UI-3, for the purpose of causing Unemployment Insurance Benefits to be paid by the United States

Railroad Retirement Board to the defendant whereas the defendant then knew that such claim was false;...."*

The act of which Claimant "freely and voluntarily and of my (his) own accord..." pleaded guilty was a clear cut act of dishonesty. Such acts have long been regarded as being sufficient to justify dismissal from a Carrier's employment. For example, Award 11, Case 1 of Public Law Board No. 3096 said:

"The offense is sufficiently reprehensible for the Carrier to determine that an employee who is so dishonest, is an employee not to be trusted or worthy of being retained in its employment."

The facts of this case are clear and undisputable. Claimant did not in any manner or form challenge any of the charges as made by the United States Attorney. He cannot now be heard to attempt to rationalize his reasons for or lack of knowledge of the filing procedures concerning unemployment insurance claims. When he signed his name to the claim forms, he accepted the responsibility of knowing what he was filing for. It is indeed unfortunate that an employee with such long service chose to be so cavalier with such an important act as claiming unemployment insurance from the Federal agency. It is not, however, within this Board's authority or jurisdiction to consider or grant equity or leniency especially where the facts are as clear and uncontroverted as they are in this case. The Organization's claim for reinstatement and payment is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 12th day of August 1993.

*Excerpt quoted from U. S. Attorney's charges.