

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30051
Docket No. CL-30627
94-3-92-3-397

The Third Division consisted of the regular members and in addition Referee Robert G. Richter when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union)
(CSX Transportation, Inc. (former Chesapeake and Ohio Railway Company))

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10808) that:

1. Carrier acted in an arbitrary, capricious and unjust manner when, without just cause, it assessed a suspension of ten (10) days actual and an overhead suspension of one year against Clerk W. G. Rinas, Jr., on May 18, 1990.
2. As a result of such arbitrary, capricious and unjust action Carrier shall now be required to remove and expunge from the record of Clerk W. G. Rinas, Jr., any and all reference to the 10 days actual suspension and the one (1) year overhead suspension, forthwith.
3. Carrier shall further be required to compensate Clerk W. G. Rinas, Jr., for all time lost commencing May 18, 1990 through May 28, 1990."

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 established clerical seniority on December 6, 1965. On December 16, 1976, Claimant was promoted to a non-contact

position with Chessie Computer Systems Incorporated, (CCSI). Under an agreement Claimant retained his seniority on Seniority District No. 3 with the Carrier.

Claimant was relieved of his duties at CCSI for alleged misuse of CCSI equipment and property. Thereafter, Claimant opted to exercise his clerical seniority with the Carrier.

On April 16, 1990, Claimant was directed to attend an Investigation on April 23, 1990, to answer the following charges:

"You are hereby charged with misuse of Company equipment and property and protection of outside business firms while on company time."

After a postponement, the Investigation was held on May 9, 1990. On May 18, 1990, the following letter of discipline was issued.

"This refers to investigation originally scheduled to be held on Monday, April 23, 1990, which was postponed pursuant to request of your representative until May 9, 1990, wherein you were charged with the misuse of company equipment, material and property, and performing functions associated with outside business firms while on company time.

Based on the evidence developed at this investigation, it is concluded that you are guilty of the charges placed against you and the discipline assessed will be actual suspension from Clerical service through the date of May 28, 1990. Further, an overhead suspension of one year duration is hereby assessed, the application of which will be withheld unless there is further cause for discipline during the one (1) year period commencing on May 29, 1990 in which case you would then be required to serve actual suspension from service for an additional period of one (1) year.

In view of the long period of time during which you misused the resources of CCSI for matters other than its business and your devotion of a substantial portion of your work time in accomplishing other than the company's work, you are hereby admonished that while employed by CSXT such activities are strictly

prohibited and should you engage in them at any time, you will immediately be subject to further and more severe disciplinary action."

While the record is clear that the Claimant misused equipment belonging to CCSI and conducted personal business during working hours, the question before this Board is whether the Carrier can discipline an employee for his misconduct while not an employee of the Carrier.

At the time of Claimant's dismissal, CCSI was a CSX Corporate Service under the CS Technology Group. CCSI employees had no union representation.

It has been a long standing procedure in the railroad industry that employees who are promoted from the ranks retain their seniority in the craft from which promoted. If such employees were guilty of misdeeds as a non-covered employee, they could also lose their seniority in accordance with the procedures of the Agreement. However, in cases like this, all the actions that resulted in the discipline happened during the Claimant's employment with CCSI.

No evidence has been introduced in the record that states CCSI employees were subject to Carrier Rules. CCSI is a separate entity not subject to the Railway Labor Act. Therefore, it is this Board's decision that the Claimant cannot be disciplined for violation of Carrier Rules when such violations did not occur while Claimant was an employee of the Carrier. The Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.