

Award No. 3
Case No. 3

PUBLIC LAW BOARD NO. 1972

PARTIES
TO
DISPUTE:

Allied Services Division, Brotherhood
of Railway, Airline, and Steamship
Clerks, Freight Handlers, Express and
Station Employees, AFL-CIO

and

The Atchison, Topeka, and Santa Fe
Railway Company

STATEMENT
OF CLAIM:

Claim of the police and Security Officers Section
of the Allied Services Division that:

- (a) Carrier violated the intent and provisions of the current Patrolmen's Agreement by improperly removing Messrs. C. W. Ambler, J. R. Cox, and D. D. Warner from service January 4, 1977 as result of formal investigation held in Kansas City, Kansas, November 30 through December 2, 1976.
- (b) Carrier shall now reinstate Messrs. C. W. Ambler, J. R. Cox, and D. D. Warner to service with all rights unimpaired.
- (c) Carrier shall also pay Messrs. C. W. Ambler, J. R. Cox, and D. D. Warner, each, the daily rate of pay which is earned upon their previous assignments, or, if the assignments no longer exist, five (5) days pay per week beginning January 4, 1977 for each and every day forward until they are reinstated to service.
- (d) Carrier shall also reimburse Messrs. C. W. Ambler, J. R. Cox, and D. D. Warner any monies which they are personally required to pay for any health and welfare protection for themselves and their families from January 4, 1977 forward.

NATIONAL MEDIATION
BOARD

DEC 26 11 07 AM '78

NATIONAL RAILROAD
ADJUSTMENT BOARD

PERSONNEL
DEPARTMENT

DEC 15 1978

FILE

- (e) Upon expiration of sixty (60) days from the original date of submission, Carrier shall also pay 10% per annum interest to each Claimant on the amounts claimed.

OPINION

AND

FINDINGS:

By reason of the agreement entered into between the parties on May 9, 1977 and upon all the evidence in the record, the Board finds that the parties are employe and carrier respectively as defined in the Railway Labor Act, as amended, and that it has jurisdiction to hear and decide the instant claim.

Claimant D. D. Warner and James R. Cox were each advised by letter dated September 21, 1978 of the hearing before this Board on October 16, 1978.

The Claimants were Special Agents. Cox established seniority on May 25, 1970, Warner established seniority on January 21, 1972 and Ambler established seniority on October 9, 1974.

On Sunday afternoon, September 28, 1975, the three Claimants were in the Division Special Agent's Office. While there a clerical employe, Mr. J. L. Kenley entered. Mr. Kenley reported to his supervisor, that Claimant Warner verbally abused him and physically forced him against the wall. He also reported that Warner threatened him.

Each of the three Claimants were requested to submit written statements on the incident. They did so. None of the statements made reference to threats or any verbal and physical altercations. Only later, upon being further questioned did Warner and Cox admit that Warner placed his hands on Kenley, forced him against the wall and threatened to "waste him". An investigation was held. All three Claimants were removed from service on November 3, 1975. Cox was reinstated on a leniency basis on January 20, 1976 and Warner and Ambler were also reinstated on a leniency basis on February 3, 1976.

On October 4, 1976, Warner accused Division Special Agent James J. Rightmire of covering up the Kenley incident of September 28, 1975 and he voluntarily submitted a written statement attesting that accusation. On October 14, 1976 Cox and Ambler submitted statements supporting Warner and accusing Rightmire of attempting to cover up the Kenley incident..

Rightmire denied the accusations of the three Claimants and signed a statement to that effect on October 18, 1976.

The three Claimants and Rightmire voluntarily submitted to polygraph examinations administered by Mr. W. F. Cowan, a certified and licensed polygraphist. Mr. Cowan reported that Rightmire was telling the truth while Warner, Cox and Ambler did not truthfully answer the questions submitted to them when examined.

About three (3) days after he took the polygraph examination, Ambler signed another statement in which he admitted that his statement of October 14, 1976 accusing Rightmire of a cover up was untrue.

A formal investigation was held on November 30, December 1 and 2, 1976. All three Claimants were removed from service on January 4, 1977. Ambler was reinstated on November 14, 1977 on a plea of leniency without pay for lost time. He is no longer a Claimant in this proceeding.

Employees have raised a number of procedural issues all of which the Board has fully considered and has concluded that none of them are of so serious import as to justify a voidance of the last investigation and the assessed penalties.

The record, with respect to the alleged cover up of Rightmire, is not without some element of uncertainty. Why would three experienced security officers, presumed to be knowledgeable in the consequences of untruthfulness, accuse a supervising security officer of conspiracy to cover up an altercation with a janitorial employee? And why would they do this only about eight (8) and nine (9) months after they were reinstated as employees of the Carrier on a plea of leniency? What were the motivations for their actions? None of these questions are clearly answered in the record. A reading of the voluminous transcript of the investigation sheds no perceptible light on what motivated the Claimants to make the accusations. Ambler's later refutation of his charges against Rightmire is understandable. He needed a job.

Polygraph test results have not been universally accepted as evidence by the courts or by arbitrators. They have overwhelmingly been held to be inadmissible. In some instances they have been admitted in evidence but given little evidentiary weight. Only where there is other admissible and independent evidence supporting the polygraph results are they accorded weight.


For all these reasons the Board finds that the penalty of dismissal from service for Claimants Warner and Cox is too severe, particularly in view of the prior reinstatement of Ambler. Warner and Cox have been out of service for almost two (2) years. That is a sufficient penalty for their indiscretions. They shall be reinstated as employees of the Carrier with full seniority and other contractual rights preserved and unimpaired, but with no compensation whatsoever for lost earnings or for any other contractual benefits from the date each of them was last held out of service until the date of reinstatement.

AWARD


The claim of C. W. Ambler is dismissed.

The claims of D. D. Warner and J. R. Cox are sustained in accordance with the findings. Carrier is directed to comply with this award within thirty (30) days from the date hereof.

PUBLIC LAW BOARD NO. 1972


DAVID DOLNICK, Chairman and Neutral Member


B. J. EAST, Carrier Member


D. E. WATKINS, Employee Member

DATED: December 14, 1978