

PUBLIC LAW BOARD NO. 2263

AWARD NO. 9

CASE NO. 23

PARTIES TO THE DISPUTE:

Brotherhood of Railway, Airline and Steamship
Clerks, Freight Handlers, Express and Station
Employees

and

Consolidated Railway Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (CR-0649-D) that:

- (a) The Carrier violated the Rules Agreement effective February 1, as amended by the Interim Rules dated January 26, 1976, particularly Rule E-1, when it assessed discipline of dismissal on Clerk S. J. Stinson, on September 26, 1978.
- (b) Claimant Stinson's record be cleared of the charges brought against him on July 25, 1978.
- (c) Claimant Stinson be restored to service with seniority and all other rights unimpaired and be compensated for wage loss sustained in accordance with the provisions of Rule F-1(e). Claimant also to be made whole for any money he was required to spend for medical and hospital services, or other benefits which would otherwise have been covered under Travelers Group Policy GA-23000."

OPINION OF BOARD:

Claimant was employed by Carrier from 1943 until his dismissal from service in September 1978. He worked in the craft or class represented by the Organization from the time of his hiring until his promotion in 1976 to the non-contract position of Sales Representative, New York City. Early in the month of March 1978, a preliminary audit by Carrier indicated probable evidence of impropriety by Claimant in the conduct of his duties for Carrier.

On March 8, 1978 an intensive transcribed interview of Claimant was conducted by two representatives from Carrier's Special Audit Department. On March 21, 1978 Claimant signed a "voluntary statement" in which he admitted taking kickbacks totalling \$2900, as well as gifts and other gratuities, for referring customers who had claims against Carrier to a private claim agent. Thereafter, Claimant received a letter dated June 14, 1978 from his Regional Sales Manager, as follows:

This is to confirm our conversation of today's date to the effect that I have been instructed to direct you to exercise your seniority rights for cause.

You have been informed of the nature of the reasons for this action by Mr. Hagen and Mr. Cramer. Please direct yourself accordingly. This is effective with the close of business June 27.

Consequently, Claimant exercised his rights under the BRAC Schedule Agreement and displaced onto a job of Crew Dispatcher in the craft or class represented by the Organization.

Under date of July 25, 1978 Claimant was served with Notice of Investigation into the following charges:

1. Received a check No. 678, dated April 5, 1976, in the amount of \$100.00 from Joseph Maitre for furnishing confidential freight claim information to an unauthorized party who was not employed by the Railroad.
2. Received the following checks during the period November 1, 1972 to October 3, 1975, from Joseph Maitre for furnishing confidential freight claim information to an unauthorized party who was not employed by the Railroad:

<u>CHECK NUMBER</u>	<u>DATE</u>	<u>AMOUNT</u>
1125	11/1/72	\$200.
1148	12/18/72	200.
1189	02/18/73	200.
1216	04/10/73	200.
132	05/25/73	200.
1292	08/06/73	200.
1408	03/29/74	200.

298	05/27/74	200.
369	08/16/74	200.
328	08/31/74	200.
1385	12/31/74	200.
440	01/30/75	100.
470	03/19/75	200.
548	07/11/75	200.
596	10/03/75	100.

3. During period 1957 to December 1977 you improperly received cash and unauthorized gratuities consisting of gift certificates from Railroad Customers that you called on while you were working for the Railroad as Sales Representative.

A Notice of Discipline was issued September 26, 1978 announcing that Claimant had been found guilty as charged and assessing discipline of dismissal in all capacities. That decision was appealed without resolution on the property and comes to us for determination.

Aside from some unpersuasive procedural objections relative to the conduct of the hearing, the Organization primarily challenges this disciplinary action premised upon arguments of "double jeopardy" and timeliness of the July 25, 1978 hearing. These are not matters of first impression between these same parties under this same Agreement. In a case very similar to the present one, P.L.B. No. 2537, in Award No. 20, dealt with those questions in a unanimous Opinion reading in pertinent part as follows:

The Board does not find that the Carrier placed the Claimant in jeopardy twice for the same offense. The Carrier simply, by following the requisite contract provisions, did not allow the Claimant to take refuge in his bargaining unit position. The Board finds that the Carrier did not remove the Claimant from his position as Manager of Freight Claims because he was an unsatisfactory Manager of Freight Claims. The Carrier removed the Claimant from service because he breached his duty and obligation to render service to protect and safeguard his Employer's interests. The Claimant having been removed from his managerial post for this violation of his basic obligation as an employee, cannot take refuge in a bargaining unit position and claim impunity for his culpable conduct. The Carrier is privileged to act on the conviction, after observing

all the contractual requirements pertaining to discipline, that the Claimant was undesirable employee who had forfeited his right to remain in the Carrier's employ, be it as a Manager of Freight Claims or as a clerk. The Carrier could properly maintain that the magnitude of the Claimant's offense cut across the entire spectrum of the employer-employee relationship. The Carrier could properly conclude that the offense perpetrated by the Claimant did not only run to his office as Manager of Freight Claims, but extended to each and every aspect of his employment.

The Carrier, obviously, had to comply with the contractual mandate of the Schedule Agreement's Discipline Rule when it dealt with the Claimant as a covered employee. We find that the Carrier complied with contractual prescriptions of the Discipline Rule and therefore it could dismiss the Claimant under the aforesaid Discipline Rule.

In our judgment, the foregoing Opinion is directly on point and is authoritative precedent which is dispositive of the arguments raised by the Organization herein.

We understand and are sympathetic to the Organization's concerns over the apparently inexplicable three-month delay by Carrier in removing Claimant from the non-contract Sales Representative job. But once he was back in the craft or class, and subject to Rule E-1, we find that he was afforded a timely and fair investigation in which the evidence overwhelmingly establishes his culpability. Nor can we find the penalty excessive given the very serious misconduct in which Claimant engaged. Based upon all of the foregoing, we must deny the claim.

FINDINGS:

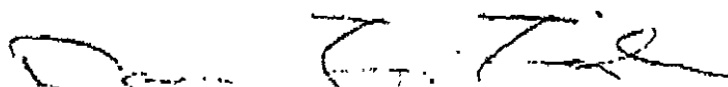
Public Law Board No. 2263, upon the whole record and all of the evidence, finds and holds as follows:

1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;

2. that the Board has jurisdiction over the dispute involved herein;
and
3. that the Agreement was not violated.

AWARD

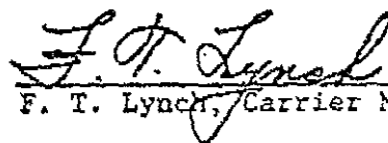
Claim denied.



Dana F. Eischen, Chairman



N. M. Berner, Employee Member



F. T. Lynch, Carrier Member

Date: 6/3/62