

PUBLIC LAW BOARD NO. 3096

Parties: Brotherhood of Railway and Airline Clerks
and
Illinois Central Gulf Railroad Company

Statement of Claim: "1. Company violated the agreement between the parties when the Company wrongfully dismissed Clerk P. S. Pistorius, Champaign, Illinois, from service of the Illinois Central Gulf Railroad effective 11:00 AM, December 14, 1981, following investigation held at 10:00 AM, December 11, 1981.

2. Company shall now be required to reinstate Clerk P. S. Pistorius to the service of the Illinois Central Gulf Railroad with pay for all time lost and her record be cleared with all seniority and all rights unimpaired."

Background: The Claimant Clerk, with a seniority date of April 1973, was dismissed by the Carrier, after a duly noticed investigation, after she pleaded guilty in the Federal District Court of falsely claiming and receiving Social Security Benefits on behalf of an individual who had died in 1970. The Claimant received the fraudulent Social Security benefits from 1977 through 1979 in the amount of \$11,500. After the Claimant pleaded guilty in Court, the judge imposed on her a three-year suspended sentence and three years of felony probation and required her to render 400 hours of public service work and to make full restitution to the Social Security Administration.

The Notice for Investigation stated it was called to develop the facts concerning her indictment for filing and receiving

- 2 -

fraudulent claims for Social Security benefits. The Organization objected at the Investigation to the fact that the Carrier had not charged the Claimant with violating any specific Carrier Rules. After the conclusion of the Investigation, the Carrier sent the Claimant a letter of dismissal, dated December 14, 1981, wherein it stated that she had been found guilty of filing and receiving false Social Security claims payments, and it had been determined that she had violated General Rules 2 and 3 for the Non-operating Employees. Rule 2 requires employees to be civil and polite in their dealing with the public and with each other. Rule 3 states, inter alia, that employees who are dishonest will not be retained in service.

Carrier's Position

The Carrier states that its handling of this case did not violate any procedural rights of the Claimant, and on its merits, it had just and sufficient cause to dismiss the Claimant.

Concerning the procedural objections of the Organization, the Carrier states that the Notice of Investigation was clear and specific and fully enabled the Claimant to prepare her defense. The omission of any rules allegedly violated did not prejudice the Claimant in defending herself at the Investigation. At the conclusion of the hearing, the Carrier stated it determined, upon all the evidence that the Claimant's conduct constituted a violation of Rules 2 and 3. The Claimant knew about the charges being preferred against her, and she was able to defend herself against these charges. The failure to cite specific rules was in no way prejudicial to her right to a fair and impartial hearing.

- 3 -

The Carrier further states that introducing the Claimant's prior personnel record in the investigation was not violative of her rights to a fair and impartial hearing, because this record was not introduced for the purpose of proving guilt but only used in determining the appropriate discipline to be assessed, if any.

On the merits, the Carrier stated there is no doubt, and the Claimant conceded it in open court, that she defrauded the Federal Government by filing false Social Security claims for two years. This is dishonest conduct. The Claimant committed a felony, and decided awards have made it clear that the Carrier is not required to retain in its employ dishonest employees. The Carrier adds that it does not matter whether the dishonesty directly or not involved the Carrier. It has the right to insist that its employees be honest. The Claimant clearly was dishonest by her acts of swindling the Social Security Administration.

The Carrier stated that termination is an appropriate disciplinary sanction in view of the Claimant's less than exemplary record. She was previously suspended for 30 days for mishandling Company funds; suspended for 15 days for sleeping on the job; suspended 10 days for failing to call a trainman and received numerous warning letters. In light of this record, dismissal is not a harsh or arbitrary sanction, and the Board should not disturb it.

Organization's Position

The Organization states that the evidence of record does not show any breach of Rules 2 and 3. There is no evidence

- 4 -

that the Claimant acted in an unladylike manner in dealing with the outside public or her fellow employees. Regarding Rule 3, the Organization states the Carrier has not proved that the Claimant's pleading guilty to submitting a fraudulent statement to the Social Security Administration has brought any disrepute to, or caused any ill will to, the Carrier. There was no statement in the newspaper articles about the Claimant's offense that described her as being an employee of the Carrier or linked her in any way to the Carrier.

The Organization states that there has to be a reasonable relationship between an employee's off duty misconduct and his conduct as an employee, or a showing that her misconduct had an actual or foreseeable adverse effect on the Carrier's business. The alleged misconduct must have a reasonable and discernible effect on the Carrier's business before it can assess discipline.

The Organization states the Claimant's personnel record was not so bad as to warrant she be discharged for an offense that did not affect or impact adversely on the Carrier. Under these circumstances the Carrier's discipline can only be described as harsh and excessive.

The Organization further notes that the Claimant did not receive a fair and impartial hearing in that the Notice for Investigation was not precise and did not cite any Company rules which were alleged violated.

The Organization asserts that the facts of record do not warrant the Carrier's arbitrary actions in denying the

Award No. 11
Case No. 1

- 5 -

Claimant the opportunity to earn her livelihood.

Findings: The Board, upon the whole record and all the evidence, finds that the employee and Carrier are Employee and Carrier within the Railway Labor Act; that the Board has jurisdiction over the dispute and that the parties to the dispute were given due notice of the hearing thereon.

The Board finds no valid basis to the Organization's procedural objections. The Notice of Investigation was explicit and clear and made the Claimant and Organization fully aware of the charges being preferred against her, namely, an investigation into whether the Claimant had been indicted and subsequently pleaded guilty to filing and receiving false Social Security claim payments. It is difficult to envision a clearer statement of a charge being investigated.

The Board finds that it is a troublesome question as to where there is a dichotomy between an employee's on-duty conduct as being in contradistinction to conduct unrelated to Company employment.

The Board finds that the answer has to be based on the offense itself. While an employee is entitled to a personal life, aside and away from her life as an employee, it is also true that no employee has an absolute vested right to a job. An employee has to earn the right to remain an employee, especially if the employer is a public corporation, prominent in the community. The employee earns this right to remain an employee, not only by rendering good and faithful service, but also by their conduct and deportment, showing that they are responsible

- 6 -

employees of a responsible Company. The Board finds that an employee's private and personal non-company conduct, important as it be, does not immunize her from the consequences of her conduct.

When the Board examines the offense to which the Claimant pleaded guilty in open court, it notes that for an extended period, i.e., for two years, the Claimant filed for and collected Social Security payments for her mother who had died seven years before the Claimant commenced filing and collecting her fraudulent claims.

The Board finds that this was a deliberate, concerted and protracted effort to defraud and cheat the Federal Government. The Carrier could properly determine that an employee who is guilty of such flagrant dishonesty is not entitled to be one of its employees. 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 Board finds that, under the facts of this case, the Carrier could properly determine that the Claimant's off-duty conduct was so delictual as to warrant her termination.

~~The Board finds~~ it noteworthy that Third Division Award 20874, cited at length by the ~~Organization~~, also states:

"In applying the foregoing principle to the instant case we must conclude that under different circumstances

Award No. 11
Case No. 1

- 7 -

Claimant's off-duty conduct might
have presented grounds for discipline."

The Board finds that this record presents grounds
for the discipline assessed against the Claimant. The Board also finds
that there is nothing in the Claimant's prior record that warrants
mitigating the assessed discipline.

Award: Claim denied.

Jacob Seidenberg
Jacob Seidenberg, Chairman and Neutral Member

F. T. Lynch
F. T. Lynch, Employee Member

P. M. Power
P. M. Power, Carrier Member

January 25, 1963