

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISIONAward Number 3701
Docket Number 3705

Referee Paul C. Carter

PARTIES TO DISPUTE: Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees

Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: Claim of the Committee of the Brotherhood (GL-8838) that:

1. Carrier violated the Agreement between the parties when it dismissed from service Mr. James Anderson Lovejoy, Communication Lead Lineman, NC&StL Line Gang.
2. (a) Claim is presented for the amount of wages he would have earned absent the violative act.

(b) Pay Mr. Lovejoy interest at the statutory rate for the state of Georgia for the amount due under (a) hereof.

OPINION OF BOARD: Claimant was employed as a lineman in Carrier's Communication Department, with service from November 25, 1974. On August 14, 1978, he was instructed to attend an investigation beginning at 8:30 A.M., August 28, 1978, on the following charge:

"You are charged with violation of General Rules O and G of the Rules and Instructions of the Maintenance of Way Department due to you making numerous long distance telephone calls from Brownsville, Tennessee, between May 15, 1978, and June 18, 1978, charging these calls to the L&N Railroad Company without proper authority; and furthermore, you are charged with making false reports and concealing facts concerning these charges made against the L&N Railroad Company."

The investigation was conducted on the date scheduled, with claimant being represented by two officers of the Organization. While the Agreement provides for a hearing upon proper request of the employe after discipline has been imposed, the Board finds that Claimant's rights were not prejudiced by Carrier preferring charges and conducting an investigation prior to the imposition of discipline in this case.

General Rules "O" and "G" of the Rules and Instructions of the Maintenance of Way Department, referred to in the letter of charge, reads:

"O. No employe is allowed to contract any bill or other obligation on account of the Company, nor to use the Company's credit, unless authorized by the proper officer."

"G. Acts of dishonesty, desertion from duty, insubordination, willful neglect, gross carelessness, making false reports or statements, or concealing facts concerning matters under investigation, will subject the offender to dismissal."

In the investigation it was developed that the long distance calls referred to as having allegedly been made from Brownsville, Tennessee, by claimant, consisted of ten calls to Atlanta, Ga., five to Murfreesboro, Tennessee, and one to Birmingham, Ala.

Claimant admitted making the ten calls to Atlanta, which it appears from the record that he later paid for. However, he denied making the calls to Murfreesboro, Tennessee, or long distance calls to any location other than Atlanta.

The Carrier offered no evidence in the investigation concerning the Birmingham, Alabama, call. The only evidence offered by the Carrier concerning the Murfreesboro, Tennessee, calls was a letter addressed to Carrier's Special Agent, by an official of the telephone company, to the effect that he had contacted a woman at the Murfreesboro telephone number who advised him that she had been called by claimant on the dates involved. Claimant denied knowing anyone in Murfreesboro. Many awards of different Divisions of the National Railroad Adjustment Board have upheld the admissibility of written statements in investigations without the writer being present. In this case, however, there is no written statement from the woman in Murfreesboro who was supposed to have received the calls from claimant. This "evidence" offered by the Carrier was too far removed from its origin to be given serious consideration. The Board finds that the Carrier failed in its proof so far as the Murfreesboro, Tennessee, and Birmingham, Alabama, calls were concerned.

The Claimant was in violation of the rules in making the long distance calls to Atlanta, Ga., without authority, that he admitted making. Discipline was warranted; however, permanent dismissal was excessive. We will award that claimant be restored to service with seniority unimpaired, but without compensation for time lost while out of service.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe 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.

The parties to said dispute were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained to the extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

Executive Secretary
National Railroad Adjustment Board

By: 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1980