

The Fourth Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(American Railway and Airway Supervisors Association:  
( A Division of TCU

PARTIES TO DISPUTE: (  
(Norfolk Southern Corporation

STATEMENT OF CLAIM: It is the Claim and request of the Petitioning Organization that:

1. Carrier has violated the Agreement, and in particular Addendum No. 4, when they assessed the discipline of dismissal to Mr. G. J. Zoerner following a hearing on charges violating Rule "L". Said discipline is unjust, unwarranted and an abuse of Carrier's discretion.
2. Because of this violative action, Carrier be required to make Mr. Zoerner whole for all lost wages incurred and clear his record of reference to the charges.

FINDINGS:

The Fourth 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 employes 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.

By letter of January 31, 1990, Claimant was ordered to attend an Investigation into an alleged violation of Rule "L". The Hearing was held on March 6, 1990, and the Claimant subsequently notified that he had been found guilty and dismissed from the service of the Carrier.

The instant alleged violation was the result of a prior Investigation held on January 9, 1990, wherein Claimant introduced into evidence two pages of computer printouts indicating how he was paid on disputed dates. These printouts contained information from his own payroll records. Subsequently, Claimant was charged for violating Rule "L" for unauthorized possession and removal of Carrier's property.

The Organization argues that the two sheets were largely insignificant. It argues that the Claimant engaged in no dishonesty in that the Claimant himself presented the material to the Hearing Officer during the previous Investigation. The computer printout had no detrimental effect on the Carrier or its operations and was not removed from the Carrier's property. The Organization points to testimony confirming that Claimant had been authorized to use the computer, had the appropriate password codes for access and obtained the information only for his own defense during the prior Investigation. It considers the action of the Carrier unsupported, unjustified and excessive.

The Carrier argues that Claimant secretly obtained the information just before Midnight on August 19, 1989, and then again after 1:00 A.M. on August 20, 1989. The Carrier asserts that Claimant's own testimony and that of the Charging Officer are sufficient to demonstrate that Claimant was aware that his conduct in the middle of the night was improper. Without authorization Claimant removed payroll records for his private use rather than that of the Carrier. The Carrier argues that statements from the Claimant acknowledge that he was in a hurry to get out of the area and "had no business on Company property...." The Carrier argues that Claimant's guilt is clearly proven and dismissal justified.

In considering the testimony and evidence relating to the alleged offense at bar, this Board finds sufficient proof that Claimant violated NS Safety and General Conduct Rule L when he engaged in "unauthorized possession, removal ... of ... material from railroad property...." Carrier's finding of guilt is clearly supported by the record of probative evidence.

With respect to the quantum of discipline this Board has often held that it may consider the imposed discipline in the light of the circumstances of each case and the employee's past record. While not denigrating guilt, we find very unusual circumstances and a unique set of facts. Claimant illicitly obtained his own records to prove his innocence at an Investigation for which he believed he might otherwise be found guilty. Claimant was an employee who had been with the Carrier for over 25 years. While his past record was not unblemished, the imposed discipline is not commensurate with the instant circumstances.


Although this Board finds the Carrier's discipline excessive, Claimant should be warned that the use of Carrier's computer for his own purposes and without authorization is tantamount to theft and dishonesty. Claimant should be made aware that such action should almost always result in dismissal. Due to mitigating circumstances, Claimant is to be returned to service without backpay, with seniority intact, and all other rights unimpaired. Claimant is to be given one last chance to prove his worth to the Carrier.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

Attest:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of February 1992.