Award No. 8266 Docket No. 8229 2-SOU-FO-'80

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

## Dispute: Claim of Employes:

- 1. That under the Current and Controlling Agreement, Laborer C. W. Whitaker was unjustly dismissed from the service of the Southern Railway System on June 15, 1978, after a formal investigation was held in the office of Mr. P. F. Sigmon, Superintendent, Atlanta Motor Shop; Atlanta, Georgia.
- 2. That accordingly Laborer C. W. Whitaker be restored to his assignment at Atlanta Motor Shop with all seniority unimpaired, vacation, health and welfare, hospital and life insurance be paid and compensated for all time lost at the pro-rata rate of pay, effective June 15, 1978.

## Findings:

The Second 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 employe within the meaning of the Hailway 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.

Claimant worked for the Carrier through January 23, 1978, at which time he reported off for the next day, stating that he had personal business to attend to. Nothing further was heard from him immediately thereafter, and the Carrier sent him a letter in February concerning his absence. The letter was returned undelivered. It developed that the Claimant was incarcerated by the State of Georgis on drug charges and, on May 25, 1978, he wrote to the Carrier concerning his job status. An investigative hearing was held shortly thereafter.

Following the hearing, the Carrier dismissed the Claimant from service on June 15, 1978, for his failure to protect his assignment. The record shows that the Claimant failed to advise the Carrier of his status for four months. Humerous previous awards have supported the right of a carrier to consider incarceration for a crime not to be "good cause" for absence. The Board has no basis on which to interfere with the Carrier's decision to dismiss the employe after the facts in the matter were fully developed in a fair and impartial hearing.

## AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Second Division

Attest:

Executive Secretary

National Railroad Adjustment Board

By Rosenarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of March, 1980.