

The Second Division consisted of the regular members and in addition Referee Theodore H. O'Brien when award was rendered.

Parties to Dispute: { System Federation No. 97, Railway Employes'  
{ Department, A. F. of L. - C. I. O.  
{ (Firemen & Oilers)  
{ Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated the contractual rights of William E. Tanksley when they removed him from service on December 3, 1975.
- (2) That, therefore, Mr. Tanksley be returned to service with all rights, privileges and benefits restored.
- (3) That he be made whole for all health and welfare benefits, pension benefits, unemployment and sickness benefits and any other benefits he would have earned had he not been removed from service.
- (4) Further, that he be compensated for all lost time, including overtime and holiday pay and that such lost time be counted as vacation qualifying time.

### 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 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.

Claimant was a regularly assigned hourly rated hostler helper employed by the Carrier with a seniority date of November 3, 1973. On December 3, 1975, an investigation was held to determine facts and place responsibility, if any, concerning Claimant's alleged violation of Rule 32 - G of the General Rules for the Guidance of Employees, 1975, Revised, Form 2626 Standard. As a

result of the investigation, the Claimant was removed from service. A prior investigation had been held on November 18, 1975 due to Claimant's alleged violation of Rules 13 and 15 of the General Rules for the Guidance of Employes, Form 2626 Standard, Revised 1975. As a result of this investigation, the Claimant was assessed 20 demerits, which brought him over the limit of sixty (60) demerits, and subjected him to dismissal under Rule 32-G. Claimant's accumulation of demerits brought about the December 3, 1975 investigation, and as a result of testimony adduced at that investigation, Claimant was removed from Carrier's service.

It is the Organization's position that Rule  $18\frac{1}{2}$  of the General Agreement governs discipline procedure, and that said rule does not provide that an employe may be dismissed from service upon accumulation of sixty (60) demerits. The Organization asserts, therefore, that Carrier's dismissal of the Claimant under Rule 32-G of Form 2626 Standard should be made void by this Board, since Rule 32 is improper and illegal. The Organization further asserts that Claimant's dismissal was excessive discipline due to the unjust assessment of twenty (20) demerits as result of the November 18, 1975 investigation.

It is the Carrier's position that the petitioning Organization never entered an appeal on the property for the twenty demerits assessed Claimant in connection with the November 18, 1975 investigation, and therefore, no appeal concerning the results of the investigation can be made before this Board. It is the Carrier's position that the instant claim involves Claimant's alleged violation of Rule 32-G of Form 2626 Standard, and his subsequent removal from service as a result of an investigation held on December 3, 1975; not the assessment of twenty demerits as a result of the November 18, 1975 investigation.

The instant claim as presented to this Board, states that the Carrier violated Claimant's contractual rights when they removed him from service on December 3, 1975. The issue to be addressed by this Board is the Claimant's removal from service, due to an accumulation of demerits, as a result of the testimony heard at the December 3, 1975 investigation. This Board will not address the issues involved in the assessment of the demerits over the period of time prior to Claimant's removal from service.

As a result of the formal investigation held on December 3, 1975, the Claimant was removed from the service of the Carrier for violation of Rule 32-G of the General Rules for the Guidance of Employes, Form 2626 Standard, Revised 1975. Rule 32-G reads as follows:

"Employes' records will be balanced at least once each year and as often as necessary to keep record up to date in the matter of merits and demerits. A balance of sixty demerits subjects an employe to dismissal."

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Testimony adduced at the investigation on December 3, 1975 revealed that the Claimant had accumulated a total of sixty-five (65) demerits, and that Claimant had received a warning letter, dated February 10, 1975, advising him that his record stood at fifty (50) demerits, and that an accumulation of sixty (60) demerits subjects an employe to dismissal.

A careful examination of the record before us proves that there is substantial evidence to support Carrier's removal of Claimant from service. The Claimant had knowledge of the rule subjecting him to dismissal from service upon accumulation of sixty (60) demerits. Claimant received a warning letter informing him that his record had reached fifty (50) demerits. Further, Claimant had received both merit and demerit marks under the provisions of Rule 32, therefore, he was well aware of the system of discipline as explained in Rule 32 of Form 2626 Standard. Upon a thorough reading of the record, we have concluded that Carrier's action in removing Claimant from service for having accumulated more than the maximum number of demerits allowed under Rule 32-G of the General Rules for the Guidance of Employes was not arbitrary or unreasonable. Accordingly, we shall deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of May, 1978.