Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 9972
Docket No. 10023
2-L&N-FO-'84

The Second Division consisted of the regular member and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (Int'l. Brotherhood of Firemen and Oilers
(System Council No. 44 AFL-CIO
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

1. That under the current and controlling agreement Service Attendant T. Cash, I. D. No. 93317, was unjustly dismissed from the service of the Louisville and Nashville Railroad Company on January 8, 1982 after a formal investigation was held on December 17, 1981.

2. That accordingly Service Attendant T. Cash be restored to service at the Louisville and Nashville Railroad Company, Boyles Shops, Birmingham, Alabama, compensated for all lost time, vacation, health and welfare, hospital, life and dental insurance be paid effective January 8, 1982 and the payment of 6% interest rate be added thereto.

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 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.

Claimant was employed as a service attendant in Carrier's Boyles Shops, Birmingham, Alabama. On December 11, 1981, he was charged:

> "You are charged with being absent and failing to protect your job assignment with the L&N Railroad Company on December 2, 3, 6, 7, 8, 9, and 10, 1981 and not complying with Agreement Rule 22 between the L&N Railroad and the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers of which you are a member, after being previously warned and disciplined for these same charges on previous occasions.

"Investigation of these charges will be conducted at 9:00 A.M., Thursday, December 17, 1981, at the Division Office Building, 4100 Vanderbilt Road, Birmingham, Alabama.

Arrange to be present with your representative, if you desire his presence and any witness you may wish to testify in your behalf.

Acknowledge receipt of this letter."

While the investigation was scheduled to begin at 9:00 A.M., claimant was not present at that time. The investigation was recessed and resumed upon claimant's arrival. Following the investigation, a transcript of which has been made part of the record, claimant was dismissed from service on January 8, 1982.

Substantial evidence was presented in the investigation, including claimant's statement, that claimant did not report for work on the days listed in the letter of charge, nor did he report off to any supervisor. In the investigation, claimant's prior record with respect to absenteeism was introducted, and made a part of the record. No objection was made by claimant or his representative concerning the introduction of claimant's prior record during the course of the investigation. It is well settled that if exceptions are to be taken as to the manner in which an investigation is conducted, such exceptions must be taken during the course of the investigation; otherwise, they are deemed waived. It has been held on numerous occasions, however, that the introduction of an employe's prior service record into an investigation is not in violation of the Agreement or prejudicial to the claimant. The prior record may not be used to prove the charge, but may properly be considered in arriving at the discipline to be imposed for a proven offense.

Based upon the evidence in the dispute, including claimant's prior absentee record, there is no proper basis for the Board to interfere with the discipline imposed by the Carrier. As stated in our Award No. 6710:

"Every employee has an obligation and a duty to report on time and work his scheduled hours unless he has good and sufficient reason to be late, to be absent, or to leave early. Those reasons must be supported by competent and acceptable evidence. No employee may report when he likes or choose when to work. No railroad can be efficiently operated for long if voluntary absences are condoned."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1984