

Award No. 8844

Docket No. CL-10679

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Marvin W. Foss, Tabulator Operator, Sacramento, California, was improperly removed from Carrier's service on August 27, 1957; and,

(b) Marvin W. Foss be restored to service with a clear record and compensated for wage loss from date of dismissal.

OPINION OF BOARD: The charge against Marvin W. Foss, Tabulator Operator, Sacramento, California, was that on August 13, 1957 he violated Carrier's Rule 801, in that Mr. Foss was argumentative, quarrelsome and insubordinate to his supervisors. Investigation was accorded Claimant Foss on August 19, 1957, sufficiently in compliance with Rule 46 of the parties' agreement, and on August 27, 1957, Superintendent Anderson advised him as follows:

"Evidence adduced at formal investigation conducted at Sacramento August 19, 1957 established your responsibility for your argumentative, quarrelsome and insubordinate actions on August 13, 1957."

and in that same letter stating to Marvin W. Foss that:

"For reasons stated you are hereby dismissed from the service of the Southern Pacific Company."

Thereafter, upon request of General Chairman J. A. Crowley, Superintendent, Anderson, denied Mr. Crowley's request for the reinstatement of Mr. Foss, Mr. Anderson stating that:

"This is to advise that we are not agreeable to the reinstatement of Mr. Foss at this time, as requested in your letter of September 4 and in conference on September 19, 1957."

Upon appeal, Mr. J. A. McKinnon, Carrier's Assistant to General Manager, the proper officer to whom such appeals should be made, denied same on February 28, 1958, hence, this claim is now properly before the Board.

We feel that the incident which arose on August 13, 1957, standing alone, would not warrant the extreme penalty of dismissal from Carrier's service which was assessed against him. (Award 7018)

However, when we go over the employment record of Mr. Foss, commencing with an incident which arose as early as May 9, 1952 at which time he was warned as to the application of Carrier Rule 801, and the other warnings and incidents of misconduct as a desirable employe as well as his unsatisfactory service thereafter, especially those of May 16, 1957 and August 9, 1957, when his supervisors were challenged to fight the penalty of dismissal from Carrier's service appears justified.

While the incidents just referred to were not properly handled as charges by the Carrier against Mr. Foss as to his conduct under the discipline rules, yet they are not satisfactorily answered in the record. Since Mr. Foss clearly violated Carrier's Rule 801, which was the charge against him, dismissal from service does not here appear unwarranted.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

That the Carrier and the Employee involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein, and

That the action of the Carrier will not be disturbed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June, 1959.