

Award No. 11548
Docket No. CLX-12556

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald A. Rock, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INCORPORATED

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

(a) The Agreement governing hours of service and working conditions between Railway Express Agency, Inc., and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective September 1, 1949, was violated at the Hollywood, California Agency in the treatment accorded Employee Joseph T. Velard, as a result of an alleged investigation conducted November 23, 1959; and

(b) His record shall be cleared of the ten demerits assessed against it, he shall be restored to service with all rights unimpaired and be compensated for full salary loss sustained on his regular assignment covering the period November 25, 1959 until his restoration to service.

OPINION OF BOARD: This is a discipline case. The facts are not in dispute. Claimant was employed by the Railway Express Agency as an extra driver on December 6, 1955. On November 23, 1959 he held the position of Driver-Clerk assigned to the Agency's Hollywood, California office.

On November 20, 1959 the Agency charged Claimant as follows:

"- - You are charged with violation of Rule 819 of Railway Express Agency General Rules and Instructions dated July 1, 1948 which reads in part . . . 'When unavoidably detained or when necessary to absent themselves for cause they must at once notify their supervisor by telephone, telegraph, or special messenger, giving exact reason for their absence and probable time or return.'

You are specifically charged with failure to protect your bulletined position #35/2 in that on Nov. 19, 1959 you did absent yourself from the aforementioned position and that you failed to notify

your supervisor of your intention to be absent, even though on Nov. 18, 1959 at approximately 5:00 PM you notified Mr. J. D. Adams, Depot Agent that you would be present for duty on Nov. 19, 1959."

A hearing was held November 23 and the Claimant appeared personally and waived representation. The record shows conclusively by Claimant's own admission that Claimant failed to report for work on November 19 without notifying his supervisor of his intended absence. The record also shows that Claimant for some unexplained reason had called Mr. Adams on the 18th to tell him that he would be to work on the 19th. The only reason Claimant gave for his failure to report for work on the 19th was that he had over-slept. He then stated that the reason he did not call the supervisor when he finally woke up was that he had laryngitis for which he had consulted a physician. He said that he had documentary evidence to show that he had consulted a physician, but that he did not have it with him. After giving his testimony he stated that there was nothing further which he cared to add. Whereupon, the hearing was declared closed.

On November 25 General Agent Olson wrote Claimant as follows:

"As a result of investigation held Nov. 23, 1959 concerning violation of Rule 819 of Railway Express Agency General Rules and Instructions, Nov. 19, 1959, the Management has assessed ten (10) demerits against your record."

Attached to the above letter and bearing the same date was a second letter from Mr. Olson to Claimant which reads as follows:

"As you will note from letter attached, you have been assessed ten (10) demerits for violation of Rule 819 of Railway Express Agency General Rules and Instructions dated July 1, 1949. This will make a total of sixty-five (65) demerits which are presently assessed against your record.

Under our demerit system a total of sixty (60) demerits results in dismissal from express service and as your record indicates, you now have sixty-five demerits.

You are hereby notified that you are, effective this date, dismissed from service with Railway Express Agency."

Under the Company's Demerit System of Discipline which was and has been in effect since July 1, 1950 when a total of sixty (60) demerits is charged against an employe he is discharged from service. In the ten-month period immediately prior to the alleged offense of November 19, 1959 Claimant had been charged and found guilty of four violations, and, as a result thereof he had accumulated fifty-five (55) demerits with which his record stood assessed as of November 19, 1959. Just three days prior thereto the Company had written Claimant the following letter of warning:

"This is to advise that you now have a total of fifty-five (55) demerits which will take forty-five (45) months to clear from your record providing no others are assessed in the meantime.

Be cautious and careful, abiding by all the rules as sixty (60) demerits at any one time will result in automatic dismissal from service."

Apparently, Claimant did not heed the warning letter of November 19.

We have carefully examined the record in this case, including the *Discipline Rules of the Agreement and the Company's Demerit System of Discipline* and have concluded that the Company's action in assessing Claimant's record with ten (10) demerits and in discharging him for having acquired more than the maximum number of demerits permitted under the Company's Demerit System of Discipline was not arbitrary or capricious, and, that the claim, therefore, should be denied.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively *Carrier and Employes* 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1963.