

**Award No. 16027**  
**Docket No. CL-16165**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Nathan Engelstein, Referee**

**PARTIES TO DISPUTE:**

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

**SOUTHERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5920) that:

(a) The Carrier violated the Agreement at Asheville, North Carolina, when Mr. J. A. Ervin, Jr., Clerk, Morganton, North Carolina, was dismissed from the service of the Carrier for alleged failure to properly perform his duties on Wednesday, February 19, 1964, "in failing to properly prepare switch list for the Morganton Switcher to place empty box cars at Drexel Furniture Plant.

(b) Mr. Ervin shall be compensated for forty (40) days' pay at the rate of his position, having lost this number of days before being restored to Carrier service.

**OPINION OF BOARD:** Mr. J. A. Ervin, Jr., Yard Clerk, Morganton, North Carolina, was dismissed from service after an investigation held on March 1, 1964. He was charged with failure to perform his duties properly on February 19, 1964, because he did not prepare a switch list for the Morganton Switcher to place empty box cars at the Drexel Furniture Plant. He was out of service for forty days effective February 22, 1964, and then was reinstated on a leniency basis on April 20, 1964.

On behalf of Mr. Ervin, Brotherhood claims that the investigation did not actually determine that he was responsible for the mistake for which he was charged, inasmuch as he was overloaded with responsibilities and forbidden to work overtime. It also contends that the discipline imposed was unwarranted, unreasonable, and too severe.

The record established that about 4:30 P. M. on February 19 the Drexel Furniture Company telephoned an order to Mr. Ervin for seven empty freight cars for loading their furniture at 7:00 A. M. the following morning. At the close of his tour of duty at 5:30 A. M., Mr. Ervin left work without listing the car order on the switch list and did not inform any other person that he had not recorded the Drexel list. The record further discloses that Mr. Ervin received the Drexel Furniture Company order an hour before he was to go off duty, when he was very busy with orders from other shippers.

Furthermore, he usually received the order for box cars from Drexel Furniture Company much earlier in the day. His failure to prepare the switch list for the Morganton Switcher to place empty box cars at the Drexel Furniture Plant resulted in the disruption of the furniture company's operations and complaint to Carrier.

There is substantial probative evidence to support the findings of the investigation that Mr. Ervin failed to prepare the switch list for the Morganton Switcher to place empty cars for loading at the Drexel Furniture Plant. The mistake, however, was not deliberate dereliction of duty, but was a result of heavy pressure of duties that required attention during the last hour before quitting time and led him to overlook the Drexel order.

For this reason, we find that the discipline of dismissal from service for forty days is excessive; twenty days is more commensurate with the offense. Accordingly, we hold that Mr. Ervin be compensated for twenty days' pay at the rate of his position, time lost before being restored to Carrier's service.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 disciplinary action imposed was excessive.

#### **AWARD**

Claim sustained in part in accordance with the Opinion and Findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST:** S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of December 1967.