Award No. 16174
Docket No. CL-16182

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5922) that:

(a) The Carrier violated the Agreement at Pomona, North Carolina, when Mr. C. C. Frazier, Yard Clerk, Pomona Yard, Pomona, North Carolina, was dismissed from the service of the Carrier on Thursday, March 5, 1964, "for your failure to properly write up the correct destination on two cars at Pomona Yard on March 3, 1964, . . ."

(b) Mr. Frazier shall be compensated for thirty-one (31) days' pay at the rate of his position, having lost this number of days before being restored to Carrier's service.

OPINION OF BOARD: By Claimant's own admission at the investigation duly called and held by Carrier, it was established that Claimant failed to properly write up the correct destination for two cars. As a result thereof, Carrier discharged Claimant. On the thirty-first day thereafter, Carrier, on a "leniency" basis, restored Claimant to his position with full seniority rights, but without pay for lost time.

The Organization contends that the action of Carrier in discharging Claimant was arbitrary and capricious because: (1) Claimant was overworked and the mistake was the result of a less than adequate work force at the yard, and (2) Carrier had by previous practice, applied the Brown System of Discipline on the property and that under said system, Claimant could have only been assessed demerits.

There is no proof in the record that the work force was so reduced that a situation was created whereby Claimant's mistake was the fault of

Carrier more than the fault of Claimant. A mere allegation of a material aspect of a party's case is insufficient — it must be affirmatively proven.

Rule 40 of the effective Clerks' Agreement reads, in part, as follows:

> "(a) Employes will not be **discharged** or disciplined except for cause. * * * " (Emphasis ours.)

Obviously, the parties had agreed upon a discipline rule, but in so doing they recognized Carrier's managerial prerogative of discharging an employe where "cause" is shown.

The Organization did establish that the Brown System of Discipline was used by Carrier in one form or another on the property until formally withdrawn on April 30, 1964. Nevertheless, this Board holds that, except where altered by agreement between the parties, the system of discipline and matters relating thereto, are a prerogative of the Carrier. Here, the only concession evidenced in this regard by the applicable agreement is that discipline must be for "cause." The Agreement does not incorporate the Brown System of Discipline and, therefore, it must be held that the System was employed simply as an operative rule of the Carrier and as an exercise of its managerial prerogatives.

The only question remaining is whether or not the discipline imposed against Claimant was arbitrary and capricious. First, it should be reaffirmed that in deciding such an issue this Board will not substitute its judgment for that of the Carrier unless its action is shown to be abusive or without foundation. See Awards 8808 (Bailer), 8822 (Daugherty), 9046 (Weston), 10642 (LaBelle), 13129 (Kornblum), 13367 (Moore), 14375 (Zumas) and 14700 (Rohman).

In order to determine whether or not the discharge of Claimant was arbitrary and capricious, the gravity of the offense must first be ascertained. Here, it is unrefuted that the error was a costly one to both Carrier and its customer shippers. It is obvious that mistakes of this sort should not be treated lightly.

The thirty days for which Claimant was off work with loss of pay, under the Awards of this Board, and in light of the gravity of the omission Claimant committed in his duties, do not result in an unduly harsh disciplinary measure. See Awards 8893 (Johnson), 13367 (Moore), 14377 (Zumas), 14874 (Ritter).

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of April 1968.

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