



Award No. 16701

Docket No. CL-17531

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, 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-6384) that:

(a) Carrier violated the Agreement at Atlanta, Georgia, when it dismissed Mr. Robert L. Whitmire, furloughed storehouseman, from the service of the Carrier on August 2, 1966, for allegedly failing to protect an assignment on May 17, 1966, seventy-seven days prior to his dismissal.

(b) Mr. Whitmire shall be restored to service of the Carrier with seniority and all rights unimpaired.

OPINION OF BOARD: On August 2, 1966, Claimant was advised by the Division Storekeeper:

"My attention has been called to the fact that you failed to protect the temporary vacancy for which you stood under the provisions of the Agreement, beginning May 17, 1966, because of the fact that you were arrested on May 17th for operating an automobile intoxicated and sentenced to serve twelve months for this offense. I understand that you are now serving this sentence.

This is to advise you that you are hereby dismissed from service of the Southern Railway Company."

Rule 40 of the applicable Agreement reads:

"(a) Employees will not be discharged or disciplined except for cause. If request is made therefor within five days, an investigation shall be held. Investigation will be made by the proper officer within five days after date of request, if possible, and in their presence. They will have the privilege of bringing to such investigation one or more employees of their own selection to act as representatives, provided such employees are in good standing on their seniority district. Pending investigation employees may be relieved from service.

If found blameless, they will be paid for lost time. If employee receives remuneration for services from Company or others during suspension or dismissal, only actual amount lost will be paid. If discharged or demerited, they will, upon written request, be furnished with a written statement giving cause.

(b) Employees feeling an injustice has been done them, or having a grievance, may always submit their case to their superior officer for consideration and review, and shall have the privilege of appealing to the next ranking officer, provided such appeal is made in writing within thirty (30) days after the reviewing officer has rendered his decision."

No request was made by or on behalf of Claimant for investigation within five days from notice of dismissal on August 2, 1966, as provided for in Rule 40 (a). Therefore, Claimant has failed to handle the claim in the "usual manner" on the property, which is an indispensable condition precedent to invoking this Board's jurisdiction (RLA, Sec. 3, First (i)). (See Award 15015 involving the same Agreement.) We will, therefore, dismiss the claim.

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 Claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1968.