



Award No. 18395
Docket No. CL-18989

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that (GL-6841):

(a) The Carrier violated and continues to violate the Agreement in arbitrarily dismissing Mr. Eddie Valentine and refusing to restore him to service.

(b) The Carrier shall restore Mr. Eddie Valentine to service with seniority, vacation, and all other rights unimpaired and shall compensate him in accordance with Rule 27 (d).

OPINION OF BOARD: Claimant was a furloughed employe performing extra work at the time of the alleged violation. On November 22, 1968 Claimant was called to fill a vacancy which existed on the 8:00 A. M. to 4:00 P. M. position. Claimant failed to protect this position by failing to report for duty.

On November 26, 1968 Claimant was notified in writing by a letter personally delivered by agents of the Carrier that an investigation was to be held on November 29, 1968 at 9:00 A. M. where he was to appear to answer the charge of "absenting yourself from duty without permission from the proper authority between 8:00 A. M. and 4:00 P. M. November 23, 1968."

Claimant failed to appear at said investigation.

There was substantial evidence given at the investigation to warrant the finding that the Claimant was guilty of the offense charged. In the absence of findings that are palpably in error or arbitrary we must accept them. The place for establishing the facts is at the lower level and as we said in Award No. 13941 "there must be a termination to an adversary proceeding and the parties have the responsibility of protection of their respective interests. The situation herein presented is analogous to a party failing to appear at a trial in a civil action set for a day certain; whereupon the court enters judgment on the pleadings or ex parte evidence."

While we agree that the penalty of dismissal is severe this Board has held many times that in the absence of a showing of arbitrary or excessive penalties we will not disturb such action. No such showing has been made here.

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 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 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 19th day of February 1971.