

Award No. 18562
Docket No. CL-19009

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6896) that:

1. The Carrier violated the Clerks' Agreement when on December 24, 1969 it summarily dismissed M. L. Staples, Clerk, Petersburg, Virginia from service.
2. Clerk M. L. Staples shall now be reinstated to the service of the Carrier with seniority and all other rights unimpaired.
3. Clerk M. L. Staples shall now be compensated for all wages and other losses sustained account this summary dismissal.
4. Clerk M. L. Staples' record shall be cleared of all alleged charges or allegations which may have been recorded thereon as the result of the alleged violations named therein.

OPINION OF BOARD: Mr. M. L. Staples was incarcerated in the County Jail, Dinwiddie, Virginia from October 4, 1969 to October 6, 1969. Mr. Staples told his father to mark him off sick and his mother had the Carrier mark him off sick.

He was dismissed from service by the Carrier "for your responsibility in connection with making false statements to be absent from duty October 5 and 6, 1969."

The record amply supports the charge that Mr. Staples made a false statement to be absent from duty as charged by the Carrier. Mr. Staples stated that he told his father to mark him off sick. He alleges that he was both sick and in jail. However, the withholding of essential information may also constitute the making of a false statement. In the instant case Mr. Staples had an affirmative duty to inform the Carrier of the entire reason for his absence, to wit, the fact that he was in jail.

The Employee's representative has strongly urged that Mr. Staples did not receive a fair hearing, however a careful review of the record shows this contention to be without merit. Mr. Staples did receive a fair hearing, one which was consistent with the requirements of Rule 27 of the Agreement.

The question thus becomes whether the discipline imposed meets the requirements of the Agreement and the decisions of this Board.

The requirements of the Agreement have been fully met.

This Board, has in a number of discipline cases stated its function as follows:

"Award No. 12438

The punishment cannot be said to be arbitrary, capricious or unsupported by the record and in accordance with the broad latitude given Carriers by this Board, in the matter of assessing discipline, we will not upset the punishment decided upon the Carrier. (See Awards 9049, 9862 and 10430.)"

To the same effect the Board has said in Award No. 17154:

"The Board feels that lacking a 'valid reason for disturbing the discipline imposed, there being no showing that Carrier acted in an arbitrary or unjust manner * * *,' we will not substitute our judgment for that of Carrier. (Award 15184). Further we have said: 'Our function in discipline cases is not * * * to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether without weighing it, there is some substantial evidence to sustain a finding of guilty. Once that question is decided in the affirmative the penalty imposed for the violation is a matter which rests in the sound discretion of the Company and we are not warranted in disturbing it unless we can say it clearly appears from the record that its action with respect thereto was so unjust, unreasonable or arbitrary as to constitute an abuse of that discretion.' (Award 5032, and also 13481)."

The action of the Carrier was not arbitrary or capricious, it is supported by the record and this Board will not upset it.

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 Employee involved in this dispute are respectively Carrier and Employee 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May, 1971.