

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19537
Docket Number CL-19792

I. M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7157) that:

1. Carrier abused sound discretion when on October 22, 1970, it arbitrarily, capriciously and without just and sufficient cause, dismissed Mr. R. L. Washington, Trucker-Cleaner, Roanoke Passenger Station, Roanoke, Virginia, from its service following investigation held 2:00 P.M. on Monday, October 5, 1970.

2. Mr. R. L. Washington shall be restored to service with seniority and all other rights unimpaired.

3. Mr. R. L. Washington shall be compensated for all wage loss sustained by him until he is restored to service.

OPINION OF BOARD: Claimant was initially employed by the Carrier as a trucker-cleaner at its Roanoke, Virginia Passenger Station on March 25, 1943. On September 30, 1970, in the same position, he was scheduled to report for duty at 3 PM. He did not report for duty and had not previously secured permission to be absent. Following a formal investigation on October 5, 1970, he was dismissed from service, for failure to protect his assignment.

The record of the hearing indicates that it was fairly and properly held; Claimant readily admitted that he had "made a mistake" in not securing prior permission to absent himself. The hearing record also shows that the Carrier secured a replacement within twenty minutes and suffered no inconvenience or extra expense by virtue of the unauthorized absence. The issue of estoppel, by virtue of a leniency plea, raised by the Carrier we find to be without merit.

The sole issue we must deal with concerns the appropriateness of the penalty imposed by Carrier. The record indicates two prior infractions in the course of the twenty-seven year service by Claimant: a record suspension of ten days dated October 24, 1969 and a record suspension of ~~thirty~~ days dated May 13, 1970. Both of these cases were also for failure to protect his assignment. The second offense disciplinary notice to Claimant among other matters stated: "A third offense of such a nature will result in dismissal".

Discipline generally has three goals: punishment of an employee, correction and training of the employee, and as an example for training purposes for other employees. We have held in many cases (e.g. Award 16065) that discipline should not be primarily punitive. Without condoning absenteeism, and being aware of the Claimant's past infractions, we find that the discipline imposed was harsh and unreasonable. Surely three days of improper absenteeism in twenty-seven years does not warrant dismissal. We shall reinstate Claimant with all rights unimpaired, but without back pay.

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 discipline imposed was excessive.

A W A R D

Claim sustained in part: Claimant shall be restored to service with seniority and other rights unimpaired, but without pay for time lost while out of service.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.