

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19557
Docket Number CL-19784

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company
((Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7122):

(a) That the Carrier violated the terms of the General Agreement and Memoranda thereto, when on Monday, April 27, 1970, it held an investigation on Clerk Robert L. Griffith for absenting himself from duty without permission at 3:30 p.m. on Thursday, April 16, 1970, and also on Friday, April 17, 1970, and subsequently by a letter of May 1, 1970, signed by Mr. G. C. Rader, Assistant Terminal Superintendent of the B&O Railroad, it dismissed Clerk Griffith from the service of the Chesapeake and Ohio Railway and Baltimore and Ohio Railroad Company; and

(b) That the Carrier restore Mr. Robert L. Griffith to service with full seniority and compensate him for all wage and wage equivalents lost for the period he is held out of service because of the Carrier's wrongful action.

OPINION OF BOARD: Claimant was dismissed from Carrier's service for absenting himself from duty without permission a part of the day April 16, 1970 and all day April 17, 1970.

The Organization has raised a number of procedural arguments; we do not find it necessary to deal with these issues as we are deciding the case on its merits.

There was substantial evidence at the investigation to support the charge against Claimant, including his admission of guilt. However the circumstances surrounding the incident and the Carrier's policy with respect to granting employees time off are far from clear. We do not question the Carrier's conclusions reached after the investigation, but we have serious misgivings with respect to the penalty assessed.

In its Submission, Carrier cites Claimant's prior record as part of its rationale in the punishment imposed; however we note that the issue of Claimant's prior record was not raised during the handling on the property by the Carrier in spite of a statement by the Organization (through its General Chairman) that "this employee has had a clear record up to this date." We affirm the principle that an employee's record may be considered in determining the discipline to be imposed; however, the past record, like any other issue, should be considered during the handling on the property.

Under all the circumstances of this case we find that the penalty of dismissal was unnecessarily harsh and improper. Therefore, we shall restore Claimant to service with seniority and all other rights unimpaired, but without compensation for time lost.

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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. G. K. Killen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1973.