

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19681
Docket Number CL-19873

John H. Dorsey, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Illinois Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7180)
that:

1. The Carrier violated the Agreement between the parties when on November 19, 1971, it dismissed Clerk Ralph E. Burrow from service after failure to afford a fair and impartial hearing and based on charges not precise and **not** substantially proven.

2. The Carrier's action in dismissing Mr. Burrow was unjust, **unreasonable**, arbitrary and capricious and an abuse of Carrier's discretion. The discipline assessed was too harsh and excessive.

3. Clerk Burrow shall now be reinstated to the service of the Carrier with seniority and other rights unimpaired.

4. Clerk Burrow shall now be compensated for all wages and other losses commencing November 19, 1971, and his record shall be cleared of all alleged charges or allegations which may have been recorded thereon as the result of the alleged violation named herein.

OPINION OF BOARD: This is a discipline case in which we find that **Claimant** was afforded due process.

Subsequent to the investigation, Carrier by letter dated November 19, 1971, informed Claimant that the evidence adduced during the investigation indicated he was guilty as charged and he was dismissed based on this evidence and in part due to his "poor past personnel record."

On July 31, 1972, Carrier offered Claimant the opportunity to **immediately** return to work on a leniency basis. This was agreeable to the General Chairman, who under date of August 1, 1972, wrote to Carrier: "We would be willing for (Claimant) to return to work with the condition that the National Railroad Adjustment Board would decide the monetary portion of our claim."

On August 8, 1972, Carrier wrote to the General Chairman:

"I had requested that you and Mr. Burrow come **to** my office at 9:00 AM, August 7, for a conference preparatory to Mr. Burrow being reinstated.

"Just prior to conference time, I received a letter from Mr. Burrow that he could not attend such a meeting until August 21. Copy of Mr. Burrow's letter is attached.

We held our conference and I stated that in my opinion Mr. Burrow was on tenuous grounds in not coming to the conference especially since my offer for conference was made on August 1 and no reason was advanced by Mr. Burrow for delaying conference on his case,

In view of Mr. Burrows' Lackadaisical attitude concerning his dismissal, this is to advise I plan on no further overtures in his behalf."

The **record** supports the findings that: (1) Claimant by his conduct **exhibited** indifference as to Carrier's offer of reinstatement; and (2) Claimant failed in his obligation to mitigate damages. But, we do find that the record raises reasonable doubts as to whether Claimant was guilty as **charged**.

For the foregoing reasons we **will** award that Carrier reinstate Claimant with seniority, vacation and all other rights unimpaired; but **we** shall deny the claim for compensation for loss of wages.

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 Claimant, because of his conduct, failed to support entitlement to compensation for loss of wages.

A W A R D

Claim sustained to the extent set forth in the Opinion, **supra**.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this **23rd** day of March 1973.