

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19696
Docket Number CL-19813

Benjamin Rubenstein, Referee

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

PARTIES TO DISPUTE: (

(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7136)
that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when on November 19, 1971 it dismissed **employee M. Bradish** from service following investigation at which the evidence adduced did not support the charge for which he was brought to trial; and,

(b) The Southern Pacific Transportation Company shall now be required to reinstate Mr. **Bradish** with all rights unimpaired and compensate him for all wages lost during the period he is held out of service.

OPINION OF BOARD: Claimant contends that he was unjustly discharged for not reporting to work on August 29, 1971.

The uncontradicted facts are: on August 28, 1971, claimant came to work after an absence due to illness. He was then told by his supervisor that in view of the fact that he **was** not expected that day, someone else was called in to fill his place.

Next day, he failed to report for work and was discharged for violation of Rule 810 of the General Rules and Regulations, providing in part: "**They** (employees) must not absent themselves from their employment without authority."

The employer contends that on August 28, 1971, claimant was advised to return next day. The claimant denies that he was given such instructions, but claims that the instructions were rather vague as to the time of his return.

A hearing was held on November 15, 1971, at which hearing a great deal of testimony was adduced, which testimony supports the employer's assertion that claimant was advised to come **to** work next day, although claimant contends that this was not his understanding.

The employees assert that the evidence adduced at the investigation lacked the decisiveness necessary to a finding of guilt justifying dismissal, and Carrier's decision was, therefore, arbitrary, capricious and prejudicial.

The record does not show any facts indicating **that** the decision was arbitrary, capricious and prejudicial. Although the letter of August 28 **giv-**en by Mr. Cooper to claimant does not specifically order the claimant to return to work next day, it is not sufficient to show that the investigation lacked decisiveness. The testimony as to the three-way conversation of that day is sufficient to establish that claimant was told orally to report for work next day. But even, if it were not mentioned in so many words, the **let-**ter of Mr. Cooper made it clear that the reason for sending the **claimant** home on that day **was** that someone else **was** called in to protect that position. It did not, in **any** way, give the impression, that claimant was not to return to work. Any employee **would**, under the circumstances, **assume** that he is to return to work on his next day of work. His failure to do so, **was** in itself a violation of **the rules**.

This Board, acting as an Appeals Board, can only rely on the record before it. The mere fact that there was contradictory testimony is not sufficient to reverse a finding. If that were so, all adversary **proceedings contain-**ing conflicting testimony would have to be reversed. Nor can this Board substitute its judgment for that of **the** carrier in evaluating the evidence, where **the** finding is based on **substantial** evidence. (Award Nos. 17914, 18784, 18550 and others)

Unauthorized absence **from duty** is, and has been, considered **in** numerous awards of this Board, as serious offenses subject to dismissal. (14601 and others)

The carrier further asserted that claimant failed to file his protest within the time limitations provided for in the agreement.

In view of the above opinion on the merits, the time limitation issue need not be discussed herein.

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:

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That **the** Claim be dismissed. That the Carrier has not violated the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of **March** 1973.