

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20004
Docket Number CLX-20289

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
PARTIES TO DISPUTE: (
(REA Express, Inc.

STATEMENT OF CLAIM: Claim of the District **Committee** of the Brotherhood that
Case 127

(1) The Agreement Governing Hours of Service and Working Conditions between REA Express and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, effective January 1, 1967, and the **OTR** Trip Rate Agreement of September 11, 1968, were violated in the treatment accorded G. D. **Kestler**, OTR Chauffeur, at the St. Louis Agency Operation, **OTR** Division, when he was, erroneously, charged with violating Rule No. 420 of Carrier's General Rules and Instructions and following a so-called Investigation in a Kangaroo Court Hearing, was dismissed from the service.

(2) He shall now be reinstated to his position, with seniority rights unimpaired and compensated for all time lost he has been required to sustain.

OPINION OF BOARD: Claimant, with seniority date in September 1962, was a regularly assigned **OTR** driver when he was dismissed, effective November 9, 1970, after hearing and findings of guilt on charges of making improper entries in the log book provided to record departures, stops, etc., on his truck route. The specifics of the charge were that, on October 27, 1970, claimant reported a 10 p.m. departure from a terminal as **10:20** p.m., and that a reported intermediate stop from **11:15** to **11:30** p.m. did not occur.

The claimant admitted to the charges at a hearing held on November 5, 1970. At this same hearing there was uncontradicted evidence that claimant's motive for making the improper entries was "to stretch out the **run**" in order to establish a higher pay rate for the run. However, at a November 10, 1970 appeal hearing, there was uncontradicted evidence that a carrier official, after riding the route for two days, had concluded that the route schedule should be extended by an additional one hour and fifteen minutes. Thus, when the two hearing records are considered jointly, the evidence on motive is found to be in such inconclusive conflict that no particular motive can be ascribed to making the improper entries.

In view of the foregoing, it **is** clear that discipline was warranted. However, it **is** also clear that important mitigating circumstances are reflected in the record. The **claimant's** admission of the charges was given freely and without equivocation; moreover, the **hearing** records do not evidence indolence or similar misconduct by claimant as the **reason** for the improper entries. Further, the claimant, with eight years service with Carrier, had no prior discipline when the herein incident occurred. Consequently, on the whole record we conclude **that** the penalty of permanent dismissal was unreasonably excessive and we shall award that claimant be restored to service without pay for time lost.

FINDINGS: The Third Division of the Adjustacnt 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 dispuo are respectively Carrier and Employees within the meaning of the Railway Labor Act, as apprwed June 21, 1934;

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

The discipline was excessive.

A W A R D

The claimant shall be restored to service without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1973.