

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20032
Docket Number CL-20234

Dana E. Eischen, Referee

(Brotherhood of Railway, Airline & Steamship Clerks,
(Freight Handlers, Express & Station Employees
PARTIES TO DISPUTE: (
(Houston Belt & Terminal Railway Company

STATEMENT OF CLAIM: **Claim** of the System Committee of the Brotherhood (GL-7351)
that:

1. The Carrier violated the Clerks' Agreement when on March 14, 1972, it summarily dismissed W. R. Prater, Clerk, Houston, Texas, from **service** of the Houston Belt & Terminal Railway Company.

2. Clerk **W. R. Prater** shall now be reinstated to the service of the Carrier with seniority and all other rights **unimpaired**.

3. Clerk Prater shall now be compensated for all wage and other losses sustained account this dismissal.

OPINION OF BOARD: Charges were filed by the Carrier against Claimant on March 7, 1972, alleging failure to protect his job assignment as relief caller at Settegast Yard on March 6, 1972. Claimant was thereafter held Out Of service pending a formal investigative hearing which **was** held on **March** 10, 1972. Thereafter, on March 14, 1972 Claimant was dismissed from the service of Carrier for failure to protect his assignment.

Careful consideration of the entire record compels the conclusions that **Claimant** received a fair hearing and that substantial evidence was **adduced** to support the Carrier's charge. Petitioner urges that mitigating circumstances in the form of an automobile malfunction prevented Claimant from protecting his assignment. However, the **uncontroverted** record places Claimant at least 70 miles from his assigned duty post on March 6, 1972 when the alleged radiator trouble occurred; some 30 minutes before he was to report for work at 7:00 a.m. Nor, does the record adequately explain why Claimant failed to establish **communication** with Carrier to report this incident until some 24 hours later at 10:00 a.m. on March 7, 1972.

Having thus established the sufficiency of the evidence and the fairness of the proceeding, the Board addresses the Petitioner's **fundamental** contention **that under these** circumstances the quantum of discipline **was excessive** and **an** abuse of discretion. It is established by innumerable **awards** of the Board that the Carriers' **assessment** of discipline, **after** a fair hearing whereby substantial **evidence** establishes a violation, will **not** be set aside **absent** a showing of such arbitrary, **unreasonable** and capricious action as to **constitute** an abuse of discretion. Moreover, this Board has established **clearly** the **principle that an employee's past** disciplinary record **may be** considered

in assessing the amount of discipline to be assigned for a proven offense. Accordingly, under all of the circumstances herein, including Claimant's unsatisfactory record during his period of 17 months employment by the Carrier, we cannot find Carrier's assessment of dismissal arbitrary, ~~unr~~ reasonable or capricious. Thus, for the foregoing reasons we find no violation of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
B y O r d e r o f T h i r d D i v i s i o n

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1973.