

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20236
Docket Number DC-20256

Frederick R. Blackwell, Referee

(United Transportation Union - (Conductors'
(& Trainmen's Committee)

PARTIES TO DISPUTE: (

(The Atchison, Topeka and Santa Fe Railway Company
(Dining and Sleeping Car Service

STATEMENT OF CLAIM: Request for reinstatement of Atchison, Topeka and Santa Fe Dining Car Steward Washington McKinney, with seniority and all rights and privileges unimpaired.

OPINION OF BOARD: Initially this claim sought both reinstatement and pay for time lost on the ground that Claimant had been improperly terminated from Carrier's service. However, the Carrier says that the case in its present form is confined to a request for leniency and, consequently, it is not a proper function of the Board to consider the request for reinstatement.

Under date of November 4, 1971, General Chairman Cloystein wrote to Carrier's highest officer stating, inter alia, the following:

"The Agreement was not complied with, but this case involves an employee with 27 years of service, and in view of the extenuating circumstances, this appeal is for leniency reinstatement with all prior rights and privileges restored, and we solicit your most careful consideration." (Emphasis added)

Subsequent correspondence on the property confirmed that, by the above passage, the General Chairman had abandoned the claim for time lost and was proceeding with the appeal on a "leniency" basis. In the Employees' Submission is found the statement that "The request was handled by General Chairman Gloystein for reinstatement on leniency basis, with all prior rights and privileges restored." (Emphasis added)

On the basis of the foregoing, and the whole record, we can but conclude that the case before us involves a plea for reinstatement solely on a Leniency basis. Therefore, the Carrier's objection is well founded. This Board has consistently held that the reinstatement of an employee on a leniency basis is solely within the discretion of Carrier. See Awards 8715, 11914, 15572, among others. We shall dismiss the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 claim involved a Leniency **plea only.**

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1974.