

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20347
Docket Number CL-20435

David P. **Twomey**, 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-7426**) that:

(a) The **Southern Pacific Transportation** Company violated the **current** Clerks Agreement **when on April 27, 1972**, it dismissed Mrs. Lens Johnson from service **on** charges of misconduct **not** proved; **and**

(b) The **Southern Pacific Transportation** Company shall now be required to reinstate Mrs. Lens Johnson to service with seniority and **all** other rights unimpaired and to allow her 8 hours compensation at the rate of her former assignment for April 28, 1972 **and** each date thereafter until so reinstated;

(c) For any month **in which** claim **is** made for compensation in behalf of the claimant, premium payments shall be made **in** her behalf **in** the appropriate **amounts** required under Travelers Group Policy Contract GA-23000, as amended, for all benefits described therein.

OPINION OF BOARD: On April 5, 1972, while working as Senior Collection **Clerk, Claimant** allegedly **falsified** the reason for her absence from her **assignment** for an excessive period of time. **The** Claimant was **given** permission to cash her check **on** this date; and was absent for about two hours. The fabrication allegedly took place in **an** oral report concerning what caused **the** delay to **Chief Clerk Christie on** April 5, 1972; and was certified as correct by **Claimant's** signature **on** a report dated April 6, 1972.

The Claimant was cited for a formal investigation by letter of April 10, 1972, **concerning** possible violation of **Rule 801** which reads in pertinent part:

"Employees will **not** be retained in service **who are...dishonest...**"

As a result of **evidence** brought forth at the formal investigation of April 14, 1972, the Claimant was dismissed **from** service **on** April 27, 1972 for **violating** Rule 801.

It is well established that **in** discipline claims, such as that before us, this Board is limited to **an** examination of the record to **ascertain** if **Carrier** had before it sufficient evidence to support a violation, and if in the **presentation** of such evidence the substantive **and** procedural rights of the employee were protected.

The record is devoid of evidence **that** **Carrier** failed to comply with the relevant provisions of the applicable agreement **concerning procedural safeguards**, and thus the conduct of the hearing is **not in** question.

Relative to **Claimant's** substantive rights, it is **convincingly** clear that the evidence **brought** forth at the hearing supports the imposition of discipline.

Concerning the matter of the discipline imposed and the Claimant's past record, we feel compelled to point out that we are aware **and** subscribe to the **numerous** awards of this Board **that** hold that an **employee must** not be retried or re-penalized for past violations but must be found culpable, on the basis of substantial evidence, of the instant charge before his or her past record may be **properly considered** for the purpose of assessing **discipliae**. **As** pointed out **in** the preceding paragraph, the evidence is clear that the **Carrier's** finding of guilt was supported by substantial evidence.

The Claimant's past record was discussed on the property and no challenges **as** to the accuracy of the **Claimant's employment** record is to be found in our record. Excerpts from Claimant's record **are** as follows:

"1. Successive leaves were granted verbally **without** written request as required and instructed, **Carrier** losing the services of **Claimant** for a period September 8, 1970, through May 1, 1971.

2. Unauthorized absenteeism, from records kept by the **Carrier**, for the **10-month** period May 17, 1971 through March 23, 1972, amounted to 49 **full eight-hour** days. When the partial day unauthorized absences of 60 hours and 25 minutes **are** added to this, **Claimant** was gone a total of more than 56 days in 10-months, or **approximately** one-fourth of the available working days.

3. In addition to the above unauthorized absences, **Claimant** was late to work during the same **10-month** period referred to above 52 occasions for a total **amount** of time of almost 15 hours, **approximating** two more days of lost **time** during the period.

"4. During the period of May 25, 1971 through September 29, 1971, Claimant was cautioned by her **supervisors** on **seven** different occasions concerning her absenteeism, tardiness, and **many** disappearances **from** her **assignment** (not included in above statistics) for **excessive** periods of time without authority.

All of the above statistics and educational talks by **supervisors** are a part of **Claimant's** personal record and were discussed with Petitioner **on** the property."

The substantial evidence **in** the record establishing the guilt of the Claimant for violating Rule 801, coupled with the Claimant's horrendous past record, makes the assessment of **permanent** discharge as discipline in **this** matter not unreasonable. Accordingly, we **must deny** the claim in its entirety.

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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of **July**, 1974.