NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20768

THIRD DIVISION Docket Number CL-20905

Louis Norris, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Atchison, Topeka and Santa Fe Railway Company
Stores Department, Argentine

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7705) that:

(a) The Carrier violated the current Clerks' Agreement, its intent and past practices, when on January 5, 1973, it held formal investigation on Clerk E. L. Crawford and subsequently removed him from service without properly notifying Mr. Crawford that such investigation was being held.

(b) E. L. Crawford shall now be returned to service and shall now be allowed eight (8) hours' pay each day of his regularly assigned work week, Monday through Friday, from January 8, 1973, forward, until as such time the violation of the Clerks' Agreement ceases, rate of pay to be the current rate of stores helper position.

(c) In addition to above monies claimed, E. L. Crawford shall now receive ten (10) per cent interest on monies claimed, such interest to be compounded on each and every pay period until as such time the violation of the Clerks' Agreement ceases.

OPINION OF BOARD: At the time this dispute arose Claimant held the regularly assigned position of stores helper, with assigned days and hours of work. He is charged with being in violation of Rule lb of the General Rules "for failure to report for duty and being absent without proper authority December 18, 19, 20, 21 and 22, 1972". Notice of Investigation, dated December 28, 1972, was mailed to Claimant by certified mail, return receipt requested, on December 29, 1972, addressed to him at his residence. Copy receipt for certified mail is part of the record, as is a copy of the Return Receipt showing delivery date of January 2, 1973. The Return Receipt is alleged to contain the signature of Claimant, but appears to have been received and signed for by Claimant's sister who resided with him. It is contended by the Claimant that he never received such notice, nor was he told of it by his sister.

Pursuant to the Notice, the formal investigation was scheduled for January 5, 1973, and was actually held on said date in the absence of Claimant, who failed to appear. Thereafter, by letter of January 10, 1973, Claimant was formally notified that he was removed from service.

Petitioner's position in this dispute is three fold and relates to:

1) Proper notification of the investigation.

2) Dismissal as unreasonable punishment under the circumstances here involved.

3) Demand for reinstatement with back pay, plus compound interest on monies claimed to be due.

It is undisputed that the Notice of Investigation was in fact mailed to Claimant on the date and in the manner detailed above, that it was addressed to him at his residence, and that it was in fact received and signed for by his sister who resided with him. The Notice spells out quite clearly the gravamen of the charged violation of the Rules regarding "being absent from duty without proper authority". This is a serious charge and merited immediate attention. The contention, therefore, that Claimant's sister did not deliver the letter to him flies in the face of normal behavior, It is inconceivable that upon receipt of a certified mail letter from Claimant's employer, with return receipt requested, that the sister was not impressed with the importance of the letter and that she did not immediately deliver it to her brother.

In fact, as indicated in the Claimant's attendance record (rp 51), on the date the Notice was delivered, January 2, 1973, he left work at 10:10 a.m. to see his doctor and assumedly went home immediately thereafter. The *next* day, January 3rd, he did not report for work and called in at 4:00 p.m., having failed to report in "on account of his leg". Obviously, he was at home on this day also. His contention, therefore, that he had no knowledge of the Notice of Investigation *cannot* be given credence.

It should be noted that as to the precedents cited by Petitioner, most deal with the form of the Notice and not the method of delivery. One prior Award, No. 20734, is somewhat in point since it relates also to a mail receipt "signed by Claimant's sister". But that Notice was properly held invalid since it was mailed to that Claimant's "old address". That is not the case here.

Under these facts and circumstances, therefore, it must be concluded that service of the Notice of Investigation, by certified mail, return receipt requested, addressed to the Claimant at his residence, was clearly proper and in compliance with Rule 24-B.

"24-B. Prior to such investigation, the employe or employes alleged to be at fault shall be apprised in writing, with copy to the Division Chairman of the Organization, of the precise nature of the charges to be investigated, as well as the time and place thereof, sufficiently in advance to afford an opportunity to obtain the presence of necessary witnesses and representatives."

We come now to the charge that in this case the discipline of dismissal was excessive and arbitrary. We cannot agree. The Carrier sets forth some 24 "incidents" of absence without proper authority, failure to call in, lateness and repeated warnings, Claimant questions several of these "incidents" as having occurred after December 28, 1972. But at least 16 of these incidents (which antedate December 28, 1972) remain undisputed on the record. In fact, Claimant had more than an inkling of the seriousness, of his past record, for, when he called in on December 26, 1972, he inquired "if he still had a job".

The record of the investigation shows that it was properly and fairly conducted and the evidence adduced supports the violations charged against Claimant. In fact, in addition to the pertinent Rules, testimony was presented as to posted notices requiring compliance with the requirements as to giving proper notice of absence and obtaining authorization.

The Board has in past decisions upheld the discipline of dismissal when based on the charge of unauthorized absence from assigned duty, buttressed by the employee's past record of similar offenses. See Award Nos. 11523 (Webster), 14601 (Ives) and 16847 (Goodman), among many others.

On the basis of the entire record, therefore, it cannot be concluded that the discipline of dismissal imposed in this case was excessive, arbitrary or unreasonable. For these reasons, therefore, this claim must be denied.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Panka
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1975.