

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20909
Docket Number CL-21175

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
(Southern Pacific **Transportation** Company
(Texas and Louisiana Lines

STATEMENT OF CLAIM: Claim of the System Committee of the **Brotherhood**
(GL-7922) that:

(1) The Carrier violated the current Clerks' Agreement at Houston, Texas, when on July 30, 1974, it arbitrarily and capriciously discharged Clerk R. Cheeks from the service of the Southern Pacific **Transportation** Company, Texas and **Louisiana** Lines, without just and sufficient cause.

(2) Clerk R. Cheeks be restored to the service of the Southern Pacific Transportation Company, Texas and **Louisiana** Lines, with **full** seniority, vacation and other **employee** rights restored unimpaired, paid a day's pay for July 30, 1974, and each subsequent date thereafter he could have performed service for the Carrier.

(3) The Southern Pacific Transportation Company, Texas and Louisiana Lines, be required to clear Clerk Cheeks' service record of the charges and discipline assessed in **regard** to the case at hand.

OPINION OF BOARD: Claimant was dismissed from Carrier's service after an investigation held to determine whether he had violated Rule 810, which reads:

"810. **Employees must** report for duty at the prescribed time **and place**, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority. They must not engage **in** other business without permission of the proper officer.

"An employee subject to call for duty must not absent himself **from** his usual calling place without **notice** to those required to call him.

"**Employee** must not sleep while on duty. Lying down or **assuming** a reclining position, with eyes closed, or eyes covered or **concealed**, will be considered sleeping."

The record contains evidence **from** which Carrier concluded that **Claimant** had made a misstatement of fact when he said he was sick **during** a period of absence. Review of the record shows that Carrier's finding was based on evidence which was of a compelling nature. The **Board** has grounds upon which it could base a **reversal** of Carrier's finding.

The **Employees** have argued a **number** of defenses with vigor. However, the **Board** agrees with Carrier that the central point in this claim is that **permission** to be absent for sickness becomes **an** unauthorized absence when the person who represents that he is sick is **not**, in fact, sick. That is the basis of Carrier's action here and, as **noted**, that finding is **amply** supported by the record. Such a finding also disposes of the **employee's** argument that Claimant was not given the benefit of Rule 49. That **Rule** is **not** **designed** to provide leave for one **who** misstates the reason for **requesting** leave.

Claimant's record of prior offenses was considered by Carrier for the sole purpose of establishing the proper measure of discipline. No impropriety is involved in the use of a past record for that limited purpose.

Based upon the **entire** record in this case the **Board** has concluded that the 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 valued 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. Pauls
Executive Secretary

Dated at Chicago, **Illinois**, this 16-h day of January 1976.