

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20991  
Docket Number CL-21072

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station **Employees**  
(Kentucky and Indiana Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the **Committee** of the Brotherhood (GL-7771)  
that:

1. Carrier violated the Agreement when, without just cause, it  
**dismissed** from service Operator **H.E.** Taylor effective August 16, 1974.

2. As a consequence Carrier shall:

- (a) Promptly restore Mr. Taylor to service with seniority, vacation and **other** rights unimpaired.
- (b) Recognize and acknowledge that Mr. Taylor is on an authentic Leave of absence, due to illness, until he receives approval from his Doctor for return to service.
- (c) Pay Mr. Taylor the amount of wages he would have earned absent the violative act, less outside earnings, in event he is not promptly restored to work upon reporting with approval of his Doctor.
- (d) Pay Mr. Taylor any amount he incurred for medical or surgical expense for himself or dependents to the extent that such payments would have been paid by Travelers Insurance Company under Group Policy No. GA-23000 and, in event of the death of Mr. Taylor, pay his estate the amount of life insurance provided for under said policy. In addition, reimburse him for premium payments he may have **made** in the purchase of substitute health, welfare and life insurance.
- (e) Pay Mr. Taylor interest at the statutory rate for the State of Indiana for any amounts due under (c) hereof,

**OPINION OF BOARD:** The record is clear that on July 17, 1974, claimant's wife advised Carrier's Chief Dispatcher that claimant was sick and unable to continue on his assignment until further notice. On July 31, 1974, claimant picked up his check, at which time he had **some** conversation with the Chief Dispatcher, stated that he had been ill, had spent some time in the hospital, but could give no definite time when he would be able to return to work.

On August 13, 1974, charges were preferred against the claimant for violation of Carrier's **Rule "T"** of the Book of Operating **Rules**, with investigation set for August 16. The letter of charge was sent certified mail to claimant's Last known address. When the investigation began on August 16, the Carrier knew that the Letter of charge had not been **delivered** to claimant; however, Carrier proceeded without the claimant or his representative present, and on the same date issued notice to claimant that he was dismissed from service.

Claimant reported on September 4, 1974, with statements from his doctors attesting to his illness. On September 24, 1974, claimant was examined by Carrier's doctors and returned to work on September 27.

On the basis of the record we find Carrier's dismissal of claimant from the service on August 16, 1974, to be arbitrary and without proper basis. The dismissal shall be expunged from claimant's record. However, the Carrier did have a reasonable period of time after September 4, when claimant reported for work, to **have** him undergo physical examination. This, no doubt, could have been accomplished in five days. We will award he be paid for time lost September 9 to September 27 under **Rule 22 (b)**. There is no proper basis for parts **(d)** and **(e)** of the claim and they are 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 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

Award Number 20991  
Docket **Number** CL-21072

Page 3

That the Agreement was violated to the extent shown in  
Opinion.

A W A R D

Claim sustained to the extent indicated in Opinion and  
Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A.W. Paulsen*  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1976.