

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20997
Docket Number CL-21006

Irwin M. **Lieberman**, Referee

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

STATEMENT OF CLAIM: Claim of the **Committee** of the Brotherhood (CL-7760)
that:

1. Carrier violated the Agreement when, without just cause, it dismissed from service Route, Bill & Utility Clerk Kirby **Emmert**, effective Tuesday, December 18, 1973.

2. As a consequence Carrier shall:

- (a) Promptly restore Mr. **Emmert** to duty with seniority, vacation and other rights unimpaired.
- (b) Pay **Mr. Emmert** the amount of wages he would have earned absent the violative act, less outside earnings.
- (c) Pay Mr. **Emmert** 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. **Emmert**, 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.
- (d) Pay Mr. **Emmert** interest at the statutory rate for the State of Kentucky for any amounts due under
(b) t h e r e o f,

OPINION OF BOARD: This **is** a disciplinary dispute in which Claimant was discharged. On Tuesday, December 11, 1973, Claimant did not report for his regular assignment as Bill and Utility Clerk, hours of 11:00 P.M. to 7:00 A.M. He contacted a Carrier official at about 1:30 P.M. the next day and gave as his reason for not reporting the previous night as automobile trouble. The record indicates that he walked back home after the automobile problem arriving at about 3:00 A.M. He claims that his first (and unsuccessful) effort to contact Carrier was between 6:15 and 6:40 A.M.

Petitioner in its submission to this Board and on the property first alleges that Claimant's guilt was prejudged by Carrier and he was deprived of a fair and impartial investigation by virtue of his prior service record being introduced and appended as an exhibit at the close of the investigation. This action is also termed "double jeopardy" by Petitioner. First it is noted that the Organization did not object to the introduction of the past record at the time of its introduction. More importantly, the introduction of an employee's prior record at the investigation does not, per se, impair the fairness and impartiality of the investigation, nor does such introduction constitute "double jeopardy". So long as the issue of guilt is established independently and the prior record is used only to assist in the determination of the quantum of discipline the ~~employee's~~ rights are not impaired.

Petitioner argues that Claimant was disciplined for an occurrence over which he had no control. Additionally, it is contended that the discipline imposed was arbitrary, capricious and excessive. First with respect to the automobile problem constituting an incident over which Claimant had no control, we concur with Carrier's reasoning that Claimant could have sought other means of transportation or at the very least reported his problem in timely fashion to his superior (see Awards 16847 and 12492).

Petitioner's contention that the discipline imposed was arbitrary and excessive ~~is~~ not persuasive. First, many awards of this Board have held that unauthorized absence from work is a ~~dismissable~~ offense in itself. Finally, Claimant's prior record indicates that in four years of service he was disciplined some nine times, five of which were for the same offense as that herein. It is clear that Carrier's actions under these circumstances cannot be considered arbitrary or unwarranted. The Claim will 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 ~~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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST :

G.W. Paulsen
Executive Secretary

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