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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 21288  
Docket **Number** CL-21414

Dana E. Eischen, Referee

(Brotherhood of Railway, Airline and  
{ Steamship Clerks, Freight. **Handlers**,  
{ **Express** and Station **Employees**

PARTIES TO DISPUTE: (

(Chicago and **North** Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
(GL-8066) that:

1. Carrier violated the terms of the Agreement effective **May 15, 1972**, particularly **Rule 21**, when under date of **May 7, 1974**, it notified **Mr. Sylvester R. Page, Clerk** at **Wood Street Station**, that he was dismissed from service effective with the **termination** of his **assignment** on **May 8, 1974**, and;

2. Carrier shall be required to compensate **Mr. Sylvester R. Page** account of such dismissal **from May 8, 1974**, forward, for all time lost at the rate of his regular assigned position.

OPINION OF BOARD: Claimant, **Mr. Sylvester Page**, was employed as **Clerk in** Carrier's **Wood Street Station** until he was dismissed from service effective **May 8, 1974**, following investigation on **May 1, 1974** into charges contained in a letter dated **April 19, 1974** as follows:

"Charge: Your **responsibility** in connection with **your failure** to comply with **Rules 7, 10 and 14** of the General' Regulations and **Safety Rules**. Specifically, leaving the company premises at approximately **10:45 A.M.** while on duty **April 18, 1974**, after being instructed by **Mr. C.A. Dudek, Agent** and **Mr. J. B. Grimm, Assistant Agent**, not to leave the property during your tour of duty, becoming quarrelsome and unruly and using boisterous and profane language while **talking** with **Messrs. Dudek and Grimm.**"

The basic facts of the incident of **April 18, 1974** are not in dispute. Claimant had been warned on several prior occasions by supervisors not to leave the property during coffee break and specifically not to go to a restaurant-tavern located across the street from the office. There are no such restrictions on Claimant's or other employees' movements during their lunch periods. At approximately **10:45 A.M.** one of Claimant's senior supervisors, **Agent C. A. Dudek**, saw him returning from the restaurant-tavern across the street. Dudek called **Mr. Page** to his office, together

with two of Claimant's lower level supervisors, Assistant Agent J. B. **Grimm** and Chief Clerk W. J. **Lacki**. During the conversation which ensued, Dudek spoke primarily for the management group in reminding Claimant that he had been told not **to leave** the property and requesting an explanation for the apparent disobedience of those instructions. Claimant acknowledged the prior oral warning but offered the excuse that he had to cash a check for bus fare. Dudek **and Grimm** both told Claimant that this was not a sufficient reason, that only an emergency would justify leaving, and that Claimant must in any **event** obtain supervisory permission before leaving the property during coffee break. All participants concur that the conversation was at that point quiet and the Claimant **was neither quarrelsome nor argumentative**. Thereupon, Mr. **Lacki** interjected his opinion that cashing a check was not an emergency **and** if asked by Claimant to do so he **would** refuse permission to leave the property. At this Claimant got up from his chair, opened the door, stated loudly "I won't put up with this shit" and **slammed** the door leaving the Agent's office. Less than five minutes later Claimant came back and **asked Dudek and Grimm** if he could discuss the matter **further** but was told that the conversation was closed. The next day he received the letter charging him with leaving the premises contrary to supervisory instructions, becoming quarrelsome and unruly, and using boisterous and profane language.

Petitioner raised two procedural issues in support of Its **arguments** that Claimant was denied a fair and **impartial** investigation to wit: 1) that the Carrier Officer **who** preferred the charges also assessed the penalty and heard the appeal and 2) the hearing officer refused to sequester witnesses at the hearing. **Neither** of these contentions is in our judgment meritorious in this case. The first because it was **raised de novo** before **our Board** but never **joined** on the property and the second because it has **no Agreement support**. We conclude that Claimant was not deprived of the fair and impartial investigation to which he **is** entitled under **Rule 21**.

**Nor** do we find **persuasive** the contention of the Petitioner that Claimant was not culpable of leaving the property without justification or permission **contrary to prior instructions**. Claimant admitted leaving the property, conceded prior oral warnings and offered inadequate reasons to justify his disobedience of reasonable supervisory orders. **There** can be no question that some discipline was warranted for that **offense**. The only issue adequately presented by this claim is whether termination from all services is warranted by this record.

Carrier contends in Its **Submission** that the offense of leaving the property was "the first and **most** serious part of the charge." Yet, Agent Dudek testified at the investigative hearing **as follows**:

"Q. **Mr.** Dudek, as I stated in questioning **Mr. Grimm**, had **Mr. Page** at the time he was instructed by **Mr. Grimm** to request permission, etc., **insofar** as **conducting** himself, would you have felt this would have been the end of the issue, and had the procedures been complied with by **Mr. Page** in the future, this would have been the **end** of the issue?

A. **Based** on **Mr. Page's** behavior at the time we were discussing his leaving the property, I would have at that time, **had he** acted in **a** manner he should have, I would have then asked personally that **Mr. Slattery** and **Mr. Podgorski**, who are on the **premises**, **to** then come into my Office. We would have discussed what **Mr. Psgehad** done, **I would have again cautioned Mr. Page** **in front** of them and supported it with a letter, **and** if he did, in any future time, leave the premises without authorization, we would then hold an **investigation**."

It is apparent to us that absent the charges of unruly and quarrelsome behavior **and** profane **and** boisterous **language** the penalty would have not been termination but rather a written reprimand. The Issue narrows to whether there is sufficient record evidence that Claimant was abusive, quarrelsome, boisterous **and** profane? **Carrier** argues that the record shows that Claimant was "recalcitrant., extremely careless, insubordinate **and** resentful of authority." After careful consideration of the record we **cannot share this extreme view**. Surely, Claimant was at fault for **raising** the level of his voice **and** lowering the level of the conversation. **And** his actions **in slamming** the door **and** storming out **cannot** be **condoned**. But we do not view his **angry** retreat as "quarrelsome" or "abusive". As for his choice of expletive, **it is** not polite or **pleasant** talk but the word at issue is **not** so **singularly** shocking to **men** of normal experience as to warrant the description "profane". **Certainly** that **particular** descriptive expression may fairly be encompassed in the colorful lexicon of **shop language** and, perhaps unfortunately, **even** as part of the everyday vernacular. We **cannot** find justification for discharge **in** the single utterance of **a** word heard almost nightly on **prime** time television shows.

Finally, **Carrier** urges that *Claimant's* record was "deplorable" and "atrocious", that he has been frequently disciplined for essentially the same offenses as herein and that he is incorrigible and/or unable to conform his conduct to acceptable standards. However, we search the record **in** vain to find substantiation of these serious charges. The record **&es** show, however, that Claimant returned **almost immediately after** his outburst to **resume** the discussion but **was** denied further conversation by his supervisor. We view the evidence as insufficient to establish that **progressive** discipline short of dismissal would be **a** futile gesture by **Carrier**.

Claimant was culpable of leaving the property without **authoriza-**  
tion contrary to **instructions** and of a serious lack of judgment, as well  
as disrespect to superiors, none of which can be condoned or ewnerated.  
**But** the penalty of dismissal is inordinately **and** unreasonably excessive  
under all of the circumstances. We shall order his reinstatement but he  
is awarded no compensation for time lost.

**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 violated.

A W A R D

Claim sustained only to the extent indicated in the **Opinion.**

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Pauls*  
Executive Secretary

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