

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21346
Docket Number CL-21574

William G. Caples, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and
Steamship Clerks, Freight **Handlers**,
Express and Station **Employees**
{ The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8095) that:

(1) Carrier violated the Rules of the Clerks' Agreement when it **dismissed** Mr. Joseph Johnson, Jr. from the service of the Company on April **28, 1975**, and

(2) Mr. Joseph Johnson, Jr. shall **be** paid **8** hours' pay at the rate of **\$40.69** beginning May 1, 1975, and each subsequent date, 5 days per week, until he is restored to service of Carrier with all **rights un-**impaired.

OPINION OF BOARD: Claimant was hired by Carrier on April **5, 1970**, and held the position of Cleaner **in** Carrier's **General** Offices **Building** at Baltimore, Maryland until April **28, 1975**. After an investigation of a charge of **failure** to properly protect his assignment, absence without **permission** and failure to properly notify Carrier of his whereabouts, the Carrier found the Claimant at fault and dismissed him from service.

The Carrier had, prior to **this** investigation, disciplined Claimant for failure to protect his assignment and had suspended him from service on three **(3)** prior occasions. After such suspensions, Claimant's work record improved.

The sole issue before the **Board** concerns the appropriateness of the penalty **imposed** by the Carrier.

Discipline is meted out with the hope that it will change a behavior pattern of an **employee in** the manner in which he **performs** his work assignments and as **an** example **for training purposes** of other **employees**. Although the Board recognizes that **any** unauthorized **absence** from work **during** working **hours is a serious offense** and **can**, in a proper case, justify dismissal, the **Board** does not believe it does so here.

It is the opinion of the Board that the discipline imposed by Carrier has served its **purpose**. The **Board** is of the opinion that the Claimant be returned to service without back pay, but with all other rights

unimpaired **and** that the disciplinary action be made a part of Claimant's record. The Claimant should **understand** without **any** question that it is absolutely mandatory and necessary that he maintain a reasonable attendance record and that he **be a** dependable **employee** of the Carrier. This is the **final opportunity** for Claimant to correct his improper conduct. The **Board** expects him to fully live up to the obligation to his job.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the **evidence**, find8 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 discipline imposed was excessive.

A W A R D

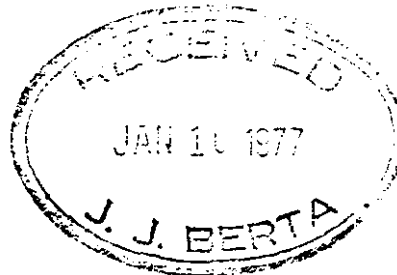
Claim sustained in part. Claimant shall be restored to service **with** seniority and **other** rights unimpaired, but without pay far time lost while out of service.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1976.



NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 21346

DOCKET NO.. CL-21574

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees

NAME OF CARRIER: Baltimore and Ohio Railroad Company

Upon application of the representatives of the
Employees involved in the above Award, that this Division
interpret the same in light of the dispute between the
parties as to the meaning and application, as provided for
in Section 3, First (m) of the Railway Labor Act, as
approved June 21, 1934, the following interpretation is
made:

Initially, we are inclined to remind the parties
that the purpose of an Interpretation is to clarify an
Award. It is not a means to reargue the original claim or
to pursue new or additional aspects of the original claim.

The decision in Award No. 21346 was that claimant,
a dismissed employee, should: "... be returned to service
without back pay, but with all other rights unimpaired. . ."
Claimant was restored to service by the Carrier in January,
1977.

The petitioning representative organization has
asked that claimant be allowed a paid vacation in the calendar
year 1977 because Award No. 21346 restored him to service
"with all other rights unimpaired."

Carrier has contended that they have fully complied
with the intent of Award No. 21346 and that no vacation pay
is due claimant in calendar year 1977 because he did not
qualify **therefor** in calendar year 1976.

Our decision in Award No. 21346 was intended only
to convert the assessment of discipline by 'dismissal to
discipline by suspension to cover the period of time from
the original date of dismissal to the date of return to

service. We do not interpret the language in our Award as granting to claimant any rights under the National Vacation Agreement other than those for which he would have been properly entitled **if**, instead of having been dismissed in the first instance, he was suspended from service from 'April, 1975 to January, 1977.

Referee William G. Caples, who sat with the Division as a neutral member when Award No. 21346 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1978.

