NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21405

THIRD DIVISION Docket Number CL-21506

William G. Caples, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8078) that:

(1) Carrier's action in the dismissal from service of Mr. Richard Coleman, General Office, Minneapolis, Minnesota, effective September 23, 1975, was unreasonable, arbitrary, capricious and unjust.

(2) Mr. Richard Coleman shall have his record cleared of any and all charges which may have been placed against him because of this case.

(3) Mr. Richard Coleman shall now be reinstated to the service of the Carrier with seniority and other rights unimpaired.

(4) Mr. Richard Coleman shall now be compensated for all wages and other losses sustained account this unwarranted dismissal.

OPINION OF BOARD: Claimant entered Carrier's service as a File Clerk in its general office traffic department on July 8, 1968, resigned on July 12, 1968 and was reemployed as a Weigh Bill Sorter in the accounting department on March 17, 1969. On May 5, he transferred to the traffic department where he was again employed as a File Clerk. He was promoted to Traffic Clerk on February 9, 1970; Division Clerk on July 6, 1970; Assistant Rate Analysis Clerk on July 23, 1970. On November 8, 1972, he was promoted to Rate Analysis Clerk which position he held until September 23, 1974.

On August 30, 1974, Claimant was notified that a hearing was to be held on Thursday, September 5, 1974, on the charge of careless and improper handling of files, inexcusable errors, inability to perform duties within a reasonable time frame, continued tardiness, excessive use of telephone for personal reasons and absenteeism.

At the beginning of the hearing on September 5, it was discovered that the Claimant had not arranged for representation by his Union; the hearing was recessed so that the Claimant could obtain such representation. On arrival of the representative, a request was made for postponement and granted. The hearing was rescheduled for September 13, 1974, at which tine it was held. After review of the evidence at the hearing, the Vice President of Traffic notified the Claimant by letter dated September 23, 1974 that he was dismissed from service. The Vice President's decision was appealed through the various steps of the appeal procedure and now reaches this Board. It is the contention

of the Claimant that there are three errors which entitle the Claimant to the granting of his claim. These are stated to be (1) that the decision of discipline was made by an officer of the company who was not present at the investigation and that this procedural error is fatal. A careful review of the contract which is incorporated as a part of the record does not indicate that there is any restriction placed upon the person who shall mete out the ultimate discipline. As a matter of fact, in one of the decisions cited it is pointed out that "such a decision may have been conducted by one not authorized to impose discipline and such action may be taken by the proper official of the decision mentioned. Rule 48(f) indicates that the parties recognize the difference between the decision as to guilt or innocence and the imposition of discipline upon one found guilty," Third Division Award 708. The decision then goes on to state "rights afforded to employes by rules such as Rule 47 are substantial ones and constitute the sole protection against arbitrary, capricious, or discriminatory vicarious officials. Violations of such rights cannot be regarded lightly." In the event that the parties to the agreement had seen fit to do so, they could by simple language have made such a provision in the agreement, and we do not deem it our role, in fact we are precluded; from writing language into the agreement or interpreting it any way other than as written; (2) the second point made by the Claimant is that the finding of guilt was not supported by substantial evidence. and (3) thirdly the discipline as meted out was by any measure excessive since dismissal is the extreme penalty. It should be pointed out that the record discloses at each step that the Claimant was extremely ably represented.

In regard to the finding of guilt, the question is not, as put forth by the Claimant, that he is entitled to a Bill of Particulars as in a criminal action, nor to use that analogy is it necessary that every one of the charges be specifically proved. It is necessary for the Carrier, as the charging party, to sustain a preponderance of proof. This is the burden which it must sustain. There is in the record specific and substantial evidence in regard to each of the specific charges made in the order of investigation and each in itself may have been sufficient to sustain the discipline meted out, but together they make proof which fully justifies the action of the Carrier. The burden of proof was sustained.

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 Employes involved in this dispute are respectively Carrier and Employes 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

The agreement was not violated.

A W A R D

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Panko
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1977.