

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21416
Docket Number CL-21353

James C. **McBrearty**, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight **Handlers**, Express and Station **Employees**
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company
(Texas **and** Louisiana Lines

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, **GL-**
8005, that:

1. The Carrier violated the current Clerks' Agreement at Houston, Texas, when on November 4, 1974, it arbitrarily, capriciously **and** in an abuse of discretion discharged Clerk Joan B. **McClain** from the service of the Southern Pacific Transportation Company, Texas and Louisiana Lines, without just and sufficient cause.

2. Carrier shall as a result compensate Clerk Joan B. **McClain** for all time lost, including all overtime **she** could have worked to include interest at the rate of **10%** per **annum** on all monies due as a result of the improper discharge.

3. Carrier shall clear the service record of Clerk Joan B. **McClain** of the charges and discipline assessed in the case at hand.

OPINION OF BOARD: Claimant was dismissed from Carrier's service on November 4, 1974 for failure to perform her assigned duties, being indifferent to duty on October 4, 7, 16, 17, 22 **and** 30, 1974, and for violating Carrier's **General Rules and Regulations** Nos. 801, 804, and 810.

In **conference** on January **16**, 1975, Carrier agreed to reinstate Claimant as a Freight Inspector, effective January 17, 1975. This agreement was made without prejudice to the position **of** either Claimant or Carrier regarding payment for time lost and the discipline assessed.

Claimant raises the issue in the instant case that there was a violation of Rule 25 in that she did not receive Carrier's decision until eleven days following the conclusion of the investigation. This issue was discussed at some length in Award No. **21415**, **and our conclusion** here is the same as there, **namely**, there was no demonstrable **pre-judicial** effect upon Claimant's case by Carrier's procedural defect. Accordingly, we conclude that Carrier's violation does not **in** the facts of this **case constitute reversible error**.

Turning to the merits of the case the record reveals that Claimant was tardy on five (5) occasions, the latest of which were October 4 and October 29. In addition, Claimant did not turn in **inspec-** 4
tion reports **on** damaged lading involving **Kroger** Company, Myers Warehouse, Gulf Atlantic Warehouse Company, **Imco** Services, City Dock 21, and **Universal** Terminal Warehouse **over** the period of September and **October 1974. Finally,** Claimant left her company-owned vehicle parked and locked on Carrier's parking lot at **3:10** P.M. on October 29, 1974, one hour and twenty minutes before the end of Claimant's tour of duty.

While there is much controversy in the record as to what really happened in some of these incidents, and why, nevertheless, they does **seem** to be substantial evidence that Claimant failed to properly carry out her assigned duties on a number of occasions.

No **employee** can be held to absolute perfection. The mere fact that his or her work has occasional defects or is marked by occasional lapses is not enough to subject him or her to discipline.

However, if an **employee** is guilty of repeated acts of carelessness or inattention to duty, none of which is sufficient, standing alone, to justify discipline, the **employee** can be disciplined on the basis of his or her whole record of careless acts.

The **Board** finds that Carrier took the action it did on the basis of substantial evidence-contained in the record of its investigation, and that no basis exists upon which it can properly reverse Carrier's decision.

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.

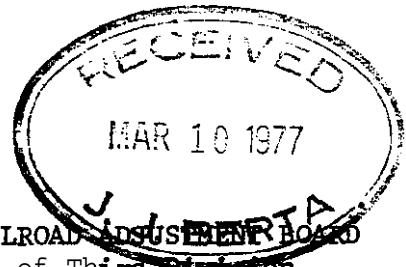
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Claim denied.

ATTEST:

A. W. Paulson
Executive Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division



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