

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21500
Docket Number CL-21474

David C. **Randles**, Referee

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

PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8010, that:

1. Carrier violated the Agreement between the parties when on December 26, 1974, they arbitrarily and capriciously dismissed Clerk E. Westerfield.
2. The Carrier's action was unjust, unreasonable and an abuse of Carrier's discretion.
3. Carrier shall now reinstate Mr. Westerfield with all rights and privileges unimpaired and pay him for all time lost, plus eight per-cent (8%) interest on all monies due.

OPINION OF BOARD: **Claimant**, a yard clerk, whose regular working hours were from 6:00 A.M. to 2:00 P.M., failed to report for work at 6:00 A.M. on November 24, 1974; however, he called at 6:40 A.M. stating that he had car trouble and asking that he be marked off duty. Subsequently, (November 25, 1974), he was charged with failing to report for his regular **assignment**. A hearing was scheduled for December 4, 1974, and at the time of the hearing, the representative of the claimant requested a postponement in that the claimant was at the hospital with his child. The requested postponement was granted and a subsequent hearing was scheduled for December 18, 1974, the claimant being duly notified. The claimant did not appear at the hearing of December 18, 1974. The claimant's representative telephoned **him, receiving** no answer. The representative requested a further postponement which was denied and **the hearing** was held, the claimant in absentia. Subsequently, the charge against the claimant was sustained and the discipline of dismissal from service of the Carrier was imposed.

The claim of the Organization is in three parts:

1. The denial of the request for a further postponement is considered unreasonable by the Organization. The claimant had prior notification of the time of the hearing on **December** 18, 1974. The parties to the investigation waited for the arrival of the claimant; in fact, his representative called him on the telephone. The record states that no one answered the telephone. No attempt was made by the claimant to contact either the hearing officer or his own representative whatsoever. The decision of the Carrier to proceed with the hearing with claimant in absentia

was reasonable in that the Carrier exhibited its reasonableness in granting a previous postponement of the hearing when it received a telephone call from the claimant stating a reason for his absence. The hearing was properly scheduled and held.

2. The **Employees'** ex parte submission contains objections relative to the **trainmaster** being the one and the same person who made the charge and conducted the hearing; and also that the claimant, being on suspension for previous offenses, cannot be required to attend a hearing or be asked questions. These objections were not raised at the hearing. It has been the practice of the Board to bar **complaints** or objections that were not raised at the hearing.

3. The claimant alleges that the discipline was severe. It is the **widely** accepted practice in discipline cases to examine the **employee's** entire work record in order to determine an appropriate penalty. The work record of this **employee** reveals that he had been suspended for two previous infractions involving his not appearing for work at the appointed time and sleeping on the job at **8:00** A.M.. These infractions, as well as the instant matter, occurred during a two month period.

There is no denial of the facts surrounding the claimant's failure to appear for work on time on November 24, 1974 (the instant charge), nor his former work record. The decision of the Carrier to discharge the claimant is not excessive.

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.

A W A R D

The claim is denied.

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By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this **15th** day of April 1977.