

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21520**
Docket Number **CL-21269**

Robert J. Ables, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7864)
that:

Carrier violated the agreement on October 27, 1973 when it unjustly disciplined Claimant R. E. **Allred**, suspended him from the service of the company **commencing** Monday, October 29 to and including November 27, 1973, a period of 30 calendar days.

For this violation, the Carrier shall now compensate Claimant **R. E. Allred**, Agent-Telegrapher, Liberty, North Carolina by paying him for all time lost as a result of this unjust discipline, **\$1,113.72**.

OPINION OF BOARD: Agent-Telegrapher R. E. **Allred** was suspended for 30 days for closing his station without authority.

The **question is** whether he had authority to close his station as he did and, if he did not, whether there was sufficient doubt as to actual instructions as to warrant reduction in suspension.

Saturday, October 27, 1973 was a regular workday for claimant at Liberty, North Carolina, a small intermediate one-man station.

On that day the assistant superintendent **and Trainmaster Swing** stopped in the depot at Liberty to use the telephone **and** found that **Allred** was not on duty, that the train order signals were in the **proceed** position and that agency records were not up to date.

Those two officers then contacted the train dispatcher at **Ashville** and determined that **Agent Allred** had not reported to the chief dispatcher before he left and closed the office.

On these facts, the company charged the agent with **violation** of operating rules 802 and 1162 in that the claimant did not close his office with proper authority.

It is uncontested that claimant previously was authorized and did close the station each Saturday after all scheduled trains had run and all work **had been** completed but only after so advising the train dispatcher.

Claimant's defense is that he had recently been authorized by **Trainmaster** Swing to close the office on Saturday when he, the claimant, had finished his **work, without** having to report to the train dispatcher that he was closing his station. This "authorization" to close the office as claimant did on October 27, 1973 was corroborated by Agent Frank **Coble** who had heard the trainmaster give this permission to claimant.

The fact that **Trainmaster** Swing was one of the two officials **who** decided that claimant had improperly closed his station on the day in question casts doubt on the authorization relied on by the claimant to close his station without checking in with the train dispatcher.

In view, however, of claimant's unblemished prior record and a reasonable basis for confusion as to how he was authorized to close his station on Saturday after scheduled runs had been completed, the penalty imposed by the carrier of 30 **days' suspension** was excessive in relation to the offense. A **suspension of 15 days is more appropriate to the offense.** Therefore, claimant's **suspension shall be reduced to 15 days and he shall be paid as though he had worked in accordance with a regular schedule for 15 of the 30 days in which he was suspended.**

The complaint that the investigation was unfair is not well taken. The claimant was adequately represented at the hearing **and** he had the opportunity and did present a witness who confirmed and corroborated an essential part of his defense. Whatever fault can be found with the carrier having lifted claimant's **rulebook** prior to the investigation which he felt was needed to prepare his defense was only technical in nature because claimant clearly knew the rules and had easy access to those rules from other **employees.**

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 **was** excessive.

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Claim denied except that suspension of 30 days shall be reduced to suspension of 15 days with back pay as though Claimant had worked a regular schedule during 15 days in which he **had been** suspended by the carrier.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls

Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1977.