

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21864  
Docket Number CL-22037

Don Hamilton, Referee

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

PARTIES TO DISPUTE:

(  
(The Denver and Rio **Grande** Western  
( Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood  
(**GL-8387**) that:

(1) Carrier acted arbitrarily, capriciously and without  
sufficient justification when it dismissed Clerk J. R. Aiello from  
service on April 30, 1976 following an Investigation held at Salt Lake  
City, Utah on April 22, 1976.

(2) Carrier shall now restore Clerk J. R. Aiello to service  
with seniority **and** all other rights unimpaired.

OPINION OF BOARD: The Claimant was dismissed from the service of  
the Carrier for absences from duty without proper  
authority.

The notice advising the Claimant of the formal **investigation**  
identified the period of absence as being "since April 1, 1976."  
Evidence was introduced concerning absences prior to April 1, 1976,  
and that evidence is disregarded by the Board as a result of the date  
specified in the notice for the **formal** investigation.

The Claimant accepted **employment** as a contract truck driver  
in addition to his employment with the **Railroad**. He did not seek to  
obtain permission of the Carrier to engage in this outside activity  
because he said "I don't feel I have to have their authority to do  
something on my own time on **my own** hours."

The evidence is clear and convincing that the work the Claimant  
performed as a contract truck driver was not **performed** only on his own  
time, but did, in fact, infringe upon his obligation to protect his  
assignment with the Carrier.

The Claimant requested a leave of absence which was denied by the Carrier. It would appear that when the Carrier denied the request, it was the prerogative of the Claimant to elect whether he wanted to continue to work for the Railroad or whether he desired to pursue his second job as a contract truck driver. It further appears that he made his election and that he placed his responsibilities as a contract truck driver ahead of his duties with the Railroad.

The failure of the Claimant to fulfill his duties and protect his work assignment has been **shown** to be **wilful** and because of his **wilful** failure to properly report to work, the Carrier acted in accordance with the Agreement in discharging the Claimant.

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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1978.