

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21918  
Docket Number CL-21867

Irwin M. **Lieberman**, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
CL-8280, that:

1. **The** Western Pacific Railroad Company violated the current Clerks' Agreement when **on** November 5, 1975 it arbitrarily and discriminately dismissed from its service K. J. Jaskala without advice of the precise charge or charges against him and without proper justification. The decision of the Carrier was based not **on** the specific charges, but on operating rules never mentioned in the specific charges.

2. The Carrier shall now **return Mr.** K. J. Jaskala to service with pay for all time lost and **with** all other rights unimpaired and clear his record of all charges arising **from** the investigation conducted on October 27, 1975.

3. The Western Pacific Railroad Company shall now be required to **allow Mr. K.** J. Jaskala eight hours' pay for each date held out of service since and including November 5, **1975**, including subsequent wage increases and other benefits as reflected by the Carrier's payroll and other records.

OPINION OF BOARD: Claimant was dismissed from Carrier's service November 5, 1975 following an investigation held **on** October 27, 1975. Petitioner's claim is based **on** two contentions: that the charge in this dispute was not precise (as compared to the Carrier's ultimate findings) and that there was no proof of **Claimant's** guilt .

Claimant was charged as follows:

"Arrange to attend a formal **investigation....to** determine facts and place your responsibility, for your alleged unauthorized absence from duty approximately 12 Noon to 3:00 **P.M. on** October 20, 1975, **and** for your failure to protect your assignment on October 21, **1975.**"

It is noted that at the investigation there was no complaint by Claimant or his representatives regarding the precise nature of the charges. Following the investigation **Claimant** received a notice from the Carrier which stated, in pertinent part:

"Refers to formal investigation held with you as Principal . . .to determine facts and place your responsibility for your alleged unauthorized absence from duty approximately 12 Noon to 3:00 P.M. on October 20, 1975, and for your failure **to** protect your assignment on October 21, 1975.

Testimony in this investigation developed that the charges were sustained.

Please be advised therewith that you are dismissed from the service of the Western Pacific Railroad Company for your violation of Western Pacific Operating Rules **706**, 707 and **711....**"

We do not agree with Petitioner's position with respect to the charges. It is clear that Claimant was charged with two precise infractions and was found to be guilty of those **same** charges by Carrier's letter following the investigation. The fact that the particular infractions could be interpreted to be violations of certain Carrier operating rules, which were not initially cited, is not material. Carrier's notification of the charges and ultimate finding in no way prejudiced Claimant's ability **to mount** a defense; he was not misled, nor was he deceived (see Award **11443**).

A study of the transcript of the investigation indicates that there was substantial evidence to support Carrier's conclusions as to Claimant's guilt; in **fact, Claimant's** own testimony constituted a virtual admission of guilt. It is not our function to substitute our judgment for that of Carrier in the determination of the appropriate penalty for a disciplinary infraction unless the discipline may be characterized as discriminatory, arbitrary or capricious. In this dispute, particularly in view of **Claimant's** past record of **discipline** and letters of **reprimand** for related misconduct, we find no basis for disturbing the measure of discipline imposed.

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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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Pauls  
Executive Secretary

Dated **at** Chicago, Illinois, this 28th day of February 1978.