

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21934
Docket Number CL-22015

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(Port Terminal Railroad Association

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8377, that:

(1) The Association violated the current Clerks' Agreement at Houston, Texas, when on December 5, 1975, it arbitrarily and capriciously discharged Clerk D. W. Morgan from their service without just and sufficient cause and denied him a fair and impartial hearing and review.

(2) The Port Terminal Railroad Association be required to restore Clerk D. W. Morgan to their service with full seniority, vacation and other employee rights restored unimpaired, pay him a day's pay for December 5, 1975, and each subsequent work day thereafter that he could have performed service for the Association.

(3) The Port Terminal Railroad be required to **clear the service** record of Clerk D. W. Morgan of this unproven charge and discipline assessed.

OPINION OF BOARD: Pursuant to his request, Claimant was afforded an investigation concerning his dismissal from service. Thereafter, Carrier reconfirmed its original decision to dismiss the Employee based upon a violation of Rule 46:

"46. Employees who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, will be subject to dismissal."

The Claimant marked off prior to his scheduled starting time, advising that he was sick. However, it developed that the employee was incarcerated, having been arrested for possession of a controlled dangerous substance. ~

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Our review of the record shows that the Claimant was dishonest when he advised that he was sick on the day in question. Thus, it only remains for **us** to determine if Carrier's dismissal was excessive under the circumstances. We conclude that it was not. The incident in question appears to deal with a second narcotics charge, and, **previously**, the Employee had been reinstated on a leniency basis after he had been dismissed.

Under all of the circumstances of record, we deny the claim.

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.