

NATIONAL RAILROAD ADJUSTMENT **BOARD**

THIRD DIVISION

Award Number **21990**
Docket Number CL-21505

Robert M. O'Brien, Referee

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

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,
GL-8020, that:

1. Carrier acted arbitrarily and capriciously **and in** a discriminatory manner, violating Rule 15 and other rules of **the Agree-ment, when on** November 12, 1974, it dismissed **from** service A. O. **Baynard**, Seacoast Transportation Company, Tampa, Florida.

2. As a consequence, Carrier shall:

(a) **Clear service record** of A. O. Baynard of the charge and any reference in connection therewith.

(b) Promptly restore A. O. Baynard to duty with seniority, vacation and other rights unimpaired.

(c) Pay A. O. Baynard the amount of wages he would **have** earned absent the violative act, less outside **earnings**.

(d) Pay A. O. **Baynard** any amount he incurred for medical or surgical expenses for himself or dependents to the extent **that** such payments would have been paid by Travelers **Insurance** Company under Group Policy No. GA-23000 and, in the event of **death** of A. O. Baynard, pay his estate the amount of life insurance provided for tier said policy. In addition, **reimburse** him for **premium** payments he. may have made **in the** purchase of substitute health, welfare **and** life insurance.

(e) Pay A. O. Baynard interest at the statutory rate for the State of Florida for **any** amounts **due under** (c) hereof.

OPINION OF BOARD: Following a hearing held on November 5, 1974, Claimant was dismissed from the **Company's** service for his alleged violation of Rule 33 of the Seacoast **Operating Manual**. Rule 33 provides that **employees** shall not be **absent** from **duty** without prior **permission**. It is the **Employees' contention** herein that the **Company** acted in an arbitrary, capricious and discriminatory manner when they dismissed Claimant from service effective November 12, 1974. They therefore **request** that he be restored to service with all rights unimpaired, and be compensated for all wages lost as a result of his unwarranted dismissal.

The Company avers, inter alia, that they are **not** a carrier within the **meaning** of Section 1, First, of the **Railway Labor Act**, as amended, and **that, accordingly**, this Board lacks jurisdiction to adjudicate the dispute submitted by the **Employees**. This Board is not persuaded **from** the record before us that the Seacoast Transportation **Company** is not a carrier within the meaning of the **Railway Labor Act**. And in any event, it is the National Mediation Board, not this tribunal, **that must make** such a determination. The record reflects that Petitioner has been certified as the duly designated and authorized representative for purposes of the **Railway Labor Act** of the craft or class of "Truck Operators & Helpers" (NMB Certification R-4123). It seems reasonable to conclude that **Railway Labor Act** coverage is precedent to such a certification. This sufficiently convinces this **Board** that the National Mediation Board has **determined** that the Company is a carrier within the **meaning** of Section 1, First.

This Board is unable to find from a thorough reading of the transcript of the November 5, 1974 hearing that Claimant **was** deprived of a fair and impartial hearing as asserted by the **Employees**. While the District Supervisor did in fact conduct the investigation and render the discipline, this **was** consistent with the **requirements** of Rule 15 (e).

Rule 33 of the Seacoast Operating Manual states, in clear and **unambiguous** language, that **employees** must not absent themselves from duty **without** prior permission. The facts adduced at the November 5, 1974 hearing clearly evince that Claimant had absented himself from duty subsequent to June 3, 1974 without permission. While he claimed **that** he had sustained a **nonwork** related injury **which** prevented him from **returning** to service, he failed to submit adequate medical evidence to support this alleged accident as he **was requested** to do.

Although the charge preferred against **Claimant** has been **proven** by substantive evidence of probative value, nonetheless Claimant's discharge, we hold, was clearly excessive. Accordingly, we **order** Claimant restored to service with his seniority unimpaired, provided he reports to **work with** the Company **within** 60 days of 'the **date of** this Award. **However, Claimant** shall not be entitled to any compensation or other benefits for **the** time he has been out of service.

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 disposed of per the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

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