

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22027  
Docket Number CL-21945

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and Station  
Employees  
I  
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
GL-8330, that:

(a) The Southern Pacific Transportation violated the current clerks' Agreement when it dismissed clerk J. A. Smith from **service** following investigation at which the charge for which he was brought to trial was not proved; and,

(b) The Southern Pacific Transportation Company shall now be required to allow clerk J. A. Smith eight (8) hours' compensation at the rate of Telegrapher-Clerk February 20, 1976 and each date thereafter until restored to service **with** seniority rights unimpaired, plus insurance, hospitalization and all other emoluments to which he is entitled.

OPINION OF BOARD: Claimant J. A. Smith entered Carrier's service on August 20, 1969, resigned in 1971; was rehired October 9, 1971 and finally was dismissed on February 20, 1976. The incident leading to his dismissal occurred on January 22, 1976. On that day he was working as Telegrapher-Clerk at Elvas Tower near Sacramento, California on the third track. At approximately 5:11 A.M., a main line freight train got a red signal at Elvas Tower and stopped, awaiting a green signal. Repeated efforts of the train crew to get a response from **Elvas** Tower were unsuccessful. Upon learning of the delayed train the Yardmaster tried repeatedly but unsuccessfully to raise Claimant by telephone and radio and finally contacted a Carrier Patrolman who went to Elvas Tower to find out why **Claimant** was not responding.

The Patrolman found Claimant seated ~~with~~ his head on a cushion on his desk, with the window shades pulled down and the phone off the hook. After some seven or eight raps on the door with his flashlight the patrolman aroused Claimant and informed him of the delayed freight train. The train finally was cleared at 5:44 A.M. after a 33 minute delay. At a hearing and investigation held on February 13, 1976 the foregoing facts were developed. Mr. Smith denied that he was sleeping and suggested either ~~communication~~ equipment failure or the fact that he had been "nervous lately" to explain his failure to respond to all attempts to reach him that night. By letter dated February 20, 1978 Claimant was dismissed from service. That letter reads in pertinent part as follows:

"Evidence adduced at formal investigation held at Sacramento, February 13, 1976, established your responsibility for failure to devote yourself exclusively to your duties and sleeping on duty while performing service as telegrapher-clerk, January 22, 1976, at Elvas Tower, Sacramento.

"Your actions in this instance constituted a violation of Rule 810 of the Rules and Regulations of the Transportation Department.

"For reasons stated, you are hereby dismissed from the service of the Southern Pacific Transportation Company. Please return any company property and Amtrak pass in your possession."

We have reviewed the record in this case carefully. In our judgement substantive evidence fully supports Carrier's conclusion that Claimant was sleeping on duty January 22, 1976. We find no grounds upon which we should substitute our judgement for Carrier's relative to the penalty imposed. The claim must be denied.

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 April 1978.