

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22039**
Docket Number CL-22044

David **P. Twomey**, Referee

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

PARTIES TO DISPUTE: (

(Fort Worth and Denver Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,
(**GL-8344**), that:

1. Carrier violated and continues to violate the roles of the Agreement, the provisions of the investigation and hearing procedures and acted in an arbitrary, capricious and prejudicial manner when it dismissed Mr. **J. R. Wall** as a result of an investigation held on **January** 30, 1976.

2. Carrier shall now be required to compensate Mr. **J. R. Wall** for all wage loss incurred including **overtime** and all benefits he is entitled to under the existing Agreements beginning February 9, 1976 and continuing until Mr. Wall is returned to service with all seniority rights and privileges unimpaired.

3. **Carrier** shall also be required to compensate Mr. Wall ten (10%) percent interest per day on all loss in compensation beginning with February 9, 1976 and continuing until Mr. Wall is returned to service.

OPINION OF BOARD: The Claimant, Mr. J. R. Wall, was notified by letter dated January 21, 1976 to appear at a formal investigation as follows:

"Attend investigation in the **Trainmaster's** office at Wichita Falls, **Texas** at **9:30** A.M., Thursday, January 29, 1976 for **the** purpose of ascertaining **the** facts and determining your responsibility in connection with your refusing to work a call at about **1:30** A.M., January 18, 1976 as clerk-operator in Wichita Falls yard. Arrange for representative and/or witnesses if desired, in accordance with governing provisions of prevailing schedule rules.

"Please acknowledge receipt by affixing your signature in the space provided **on** copy of this letter."

The investigation was rescheduled for January 30, 1976, and was held on that date in Wichita Falls, Texas. By letter dated February 9, 1976, the Claimant was notified that he was dismissed from the **service** of the Carrier as follows:

"February 9, 1976 - Effective this date, you are hereby dismissed from the **service of** the Fort Worth and Denver Railway Company for violation of **Rules** 700, 702, and 702(B) of the Consolidated Code of Operating Rules, Edition of 1967, by failure to report for duty as instructed by **Trainmaster** and Agent at Wichita Falls Yard at about **1:30 A.M.**, January 18, 1976, as disclosed in investigation. afforded you on January 30, 1976 at Wichita Falls, Texas,

Relinquish any **and** all company property, including free transportation, that has been issued to you."

The procedural contentions made by the Organization have been considered by this Board, and we find no prejudicial error in the narrow record of this particular case. We find that clear and substantial evidence exists in the record before us to support the Carrier's finding that the Claimant refused to **comply** with the Carrier's instructions to work the call in question. We find, however, **that** the discipline of dismissal in this case is excessive. Therefore, the Claimant is ordered reinstated with all rights unimpaired, but without back pay or benefits.

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 violated.

A W A R D

The Claim is sustained to the limited extent set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTRST:


Executive Secretary

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