

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22085
Docket Number CL-21845

Herbert L. Marx, Jr., Referee

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

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,
(GL-8288) that:

1. The Carrier violated the **Rules** Agreement effective May 1, 1955, as amended July 15, 1967, particularly the disciplinary **rules** when it imposed discipline of dismissal from the **service** upon Mr. John Arnold . Collett, Junior Console Operator, **Omaha**, Nebraska, Union Pacific Head-quarters Building, **Management Information Service Roster No. 21**, on April 22, 1975.

2. Carrier shall compensate Mr. John Arnold **Collett** one (1) day's vacation pay for April 1, 1975; further, that he be compensated for eight (8)hours' pay **each** work day **commencing** April 2, 1975 until restored to service on September 2, 1975 and for **all** overtime he would have worked during that period.

3. Carrier shall pay him ten (10) percent interest on any end **all** monies that he was deprived of during his improper dismissal from the service.

4. Carrier **shall** include **any wage** increases placed in effect and any change in fringe benefits during the period of dismissal which Claimant would otherwise have been entitled.

5. Claimant's record **shall** be cleared of **any** disciplinary action taken as a result of the arbitrary, unfair, illegal, partial, biased, **discriminatory** and grossly unjust hearing held on April 8, 1975.

OPINION OF BOARD: This dispute **stems** from Carrier's dismissal of Claimant following an investigation held on **April 8, 1975**. Claimant appeared at the investigation under charge of being absent without proper authority on April 1, 1975.

After carefully reviewing the record, we find that Claimant was afforded a **fair and impartial** hearing **and that**, except as herein-after noted, the case was free of procedural defect. Accordingly, we turn to the merits.

In essence, **Claimant was brought to trial and discharged** from service - later changed to a five-month disciplinary suspension (the first **actual** discipline assessed **Claimant** during his railroad career). This disciplinary action was for absenting himself **from** his assignment and for failing to follow the proper **procedure** to request a vacation day, as set forth in Carrier's rules. Claimant contends that he had placed on the desk of his supervisor a written request to take one day's vacation on **April 1, 1975**, and thus he was excused from work.

We find sufficient evidence in the record to establish that **Claimant** had not discussed with, or received permission from, his superiors to take April 1 as a vacation day.

Further, we find that Claimant did not follow established procedures to request vacation time **and** that merely placing a vacation request on a supervisor's desk does not rise to the level of receiving approval for a vacation. Under these circumstances some discipline was **warranted**.

We conclude, however, that a five-month actual suspension was grossly excessive when weighed against the offense. Moreover, Claimant had never before been assessed discipline. We have often held that the purpose of discipline is to teach and not to penalize. Ten days is an appropriate disciplinary suspension under the **circumstances**, **and** we accordingly reduce the discipline to a ten-day suspension.

Carrier argues that **Rule 45(a)** of the **agreement** permitted it to withhold Claimant from service pending the conclusion of the investigation. The rule reads:

"(a) No employee will be disciplined or dismissed **without** a fair hearing by his supervising officer. Suspension in proper cases pending a hearing, which will be held within seven (7) days of the time charge is made or employee suspended. will not be considered a violation of this principle. At a reasonable time prior to the hearing the employee will be apprised of the precise charge against him; in case of unsatisfactory service or incompetency all charges to be investigated **will** be stated. **The** employee **will** have reasonable opportunity to secure the presence of witnesses and the right to be represented by the duly accredited representatives as defined in **Rule 57**.

"Investigations and hearings shall be held when **possible** at home terminal of the employee involved and at such time as not to cause the **employee** to lose time." (Emphasis added)

Cur review of the record leads us to find that this was not a case properly justifying the withholding of an employee from service pending hearing.

Accordingly, we also find that **Claimant** shall not be compensated for April 1, the day he sought to take as a vacation day. Claimant did not have permission to be absent on this day.

Claimant shall be compensated for **all** wages lost between April 2, **1975** (the date he was improperly withheld **from** service) to and including April 22, **1975** (the date he was discharged from service) account being improperly withheld from service. Claimant shall **also** be compensated in accordance **with** the second **paragraph** of **Rule 45(a)** for wage loss incurred subsequent to May 2, **1975**, when his ten-day suspension was concluded. **The** interest claimed in part **3** of the Statement of Claim is 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 violated.

A W A R D

Claim sustained to the extent and in the amount set forth in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

ATTEST:

A. W. Pauls
Executive Secretary

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