

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22095
Docket Number CL-221.U

Louis Yagoda, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8394, that:

(a) The Southern Pacific Transportation Company violated the current **Clerks' Agreement** when it arbitrarily, prejudicially, capriciously and unreasonably **dismissed** Mr. E. L. Hepner from its service following investigation at which charges filed against him were not fully sustained; and,

(b) The Southern Pacific Transportation Company shall now be required to reinstate Mr. E. L. **Hepner** with seniority unimpaired, to allow compensation for all wage loss incurred, all expense which otherwise would have been borne by the Carrier if not dismissed, to **reimburse him** for any travel expense in other **employment**, and to compensate **him** for all hospitalization and Travelers Insurance Company loss **from time dismissed** until restored to service with **all** of the above rights.

OPINION OF BOARD: The subject of this **claim** is an appeal from a disciplinary termination imposed on **Claimant** after hearing, on charges alleging misconduct offensive to a fellow **employee** by **Claimant** on two occasions and subsequent alleged "indifference and absence from duty without proper authority" on another occasion.

Claimant began his service with Carrier on September 27, 1947 and was working as a train crew dispatcher when the circumstances occurred on which Carrier acted in imposing the subject discipline.

Testimony from a black **employee** (Mrs. Parker) assigned as a switch crew dispatcher was that on two occasions **Claimant** had made statements to her of a racially insulting and coarse nature. One of these occurred during a period when **Mrs. Parker** was in the course of qualifying but was also training **Claimant**. According to **Mrs. Parker**,

after she had corrected an entry made by Claimant and had thereafter jestingly lightly tapped Claimant on the head with a clip board (as a gesture of urging him to "remember"), **Claimant** made a statement to her to the effect that he had wanted to **call** her by a vile racial epithet and also "knock her on her ass."

The other episode testified to by Mrs. Parker occurred during the course of a discussion which Claimant initiated with Mrs. Parker concerning whether he owed her an apology "for anything that he had done to her" in which he then proceeded to make a coarse **sexual** comment involving a reference to "**nigger** fun."

In his own testimony, Claimant admitted that he had made both the statements quoted by Mrs. Parker, but averred that he was not a "**racist**" and, in respect to the first of the statements made by him, defended himself on the **grounds** that he had merely told her what he had "wanted to say," differentiating this from having directly addressed these words to Mrs. Parker.

The second of the charges was supported by testimony that on December 24, **1975**, **Claimant**, while on a regularly assigned schedule of **7:45 A.M. to 3:45 P.M.**, absented himself from work at **7:55 A.M. without** request for permission or authorization to do so, necessitating replacement of him with another **employee**.

Further testimony by Assistant Terminal Superintendent was that when Claimant was asked for an explanation two days later, he responded that he had absented himself so that the Assistant **Terminal** Superintendent "could fire him"; when urged to respond **more** seriously, he repeated the same answer, stating that he was acting under Cod's guidance in insisting on not resigning but causing himself to be fired and going on to do other things of a more worthy nature, but enabling him also to qualify for **unemployment** benefits.

We find Carrier's **charges** to have been convincingly supported by the evidence. Both are serious infractions.

Because of this **employee's** long service with Carrier and because of indications in the record that Claimant is probably now aware of the future **intolerability** of again assuming the racially insulting postures of which he was guilty, and because of the indications that his desertion of work was an eccentric act arising out of a temporarily peculiar frame of **mind**, we conclude that the discharge penalty should be amended to a disciplinary suspension without pay for the period between Claimant's first disemployment to a date following issuance of this Award.

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 partially sustained in-that the discharge of **Claimant** shall be amended to a disciplinary suspension without pay for the period from the date first held out of **service** to a date within thirty (30) hys after issuance of this Award.

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.