

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22107
Docket Number CL-22087

Irvin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employes**
(
(**Southern Railway Company**

STATEMENT OF CLAIM: Claim of the **System Committee** of the Brotherhood
GL-8364, that:

(a) Carrier violated the **Agreement** at Charlotte, North Carolina, when it orally **dismissed** Mr. **Sam Broome, Laborer-Groundman** from the service of the Carrier for allegedly failing to protect his assignment.

(b) Carrier shall be required to restore Mr. **Broome** to service with seniority and all rights **unimpaired**, and **compensate him** for all time lost beginning **Wednesday, November 19, 1975** and continuing until restored to the service of the Carrier.

OPINION OF BOARD: This is a discharge dispute in which **Claimant** was restored to duty on a leniency basis by Carrier **some six months** after the original **dismissal**.

Petitioner alleges several technical errors on Carrier's part which it believes sufficient to support a sustaining award. While it is apparent that there was **some informality** in the actions of Carrier, we cannot agree with Petitioner; the Agreement was complied with in every essential respect. It was agreed that the hearing itself was fair and appropriately conducted.

With respect to Carrier's finding that **Claimant** was guilty of failure to protect his position, the record is quite clear and **unambiguous**. A reasonable conclusion to be reached after studying the transcript would indicate that **Claimant** took an unauthorized vacation beginning **September 26, 1975**. Further, he did not report back to work after the two-week vacation, alleging that he was ill. **When** asked to support his **claim** of sickness and inability to work with a doctor's certification, he **simply** never complied. Carrier attempted to contact **Claimant** to determine his status on at least seven occasions by telephone and one visit to his **home** to no avail. When finally Carrier wrote **Claimant** on **November 3, 1975** and asked him to report to work or provide a satisfactory reason for not reporting within five days, he failed to comply within the period specified. It **must** be concluded, **based** on the above facts, that Carrier had sufficient grounds for its conclusion and action.

Concerning the measure of discipline imposed, it has long been established that this Board will not substitute its **judgement** for that of Carrier in disciplinary situations unless the action taken by Carrier **may** be characterized as arbitrary, capricious or **discriminatory**. In this dispute the discipline **imposed**, in the light of Claimant's past record and the particular infraction, is certainly reasonable.

FINDINGS: The Third Division of the **Adjustment** Board, after **giving** the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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. Paulus
Executive Secretary

Dated at Chicago, Illinois, this **16th** day of June **1978**.

JUL 12 1978