

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22368
Docket Number CL-22448

George S. Roukis, Referee

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

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8575) that:

1. Carrier violated the Agreement, between the parties, when on August 5, 1977, Mr. John **R.** Fields was dismissed without any chance to attend the investigation scheduled by the company.

2. The Carrier's action was unjust, unreasonable and an abuse of Carrier's discretion. The discipline was assessed without any proof whatever of the charges that were made.

3. This discipline shall be set aside and Mr. Field's request for a leave of absence will be granted until such time as he is able to appear.

OPINION OF BOARD: On June 14, 1977, claimant was imprisoned for a period of two (2) to five (5) years as a result of his guilty plea on a charge of attempted rape.

On July 5, 1977, claimant was advised by Carrier to appear for a formal investigation **on** the charge of unauthorized absence from duty since June 16, 1977. After one postponement granted at the request of claimant's representative, the investigation was conducted on July 29, 1977. Claimant, of course, was not present. By notice dated August 5, 1977, claimant was dismissed from service.

Although we recognize that each discipline case must be considered on its own merits, we find **that** this case is strikingly similar in all important aspects to the one handled by this Division in **Award** No. 20294. The principals are the same. The **basic** contentions of the petitioner are the same. We believe that the outcome must also be the **same**. We fully subscribe to and adopt the principles enunciated **in** Award No. 20294, which are quoted in pertinent part hereinafter:

"We have no difficulty in issuing a denial award under this record because Claimant himself, by his own misconduct **in** perpetrating a number of **severe** crimes of violence, affected his contractual right to be present at the investigation. There is absolutely no evidence of record to suggest that Carrier was a motivating factor in precluding Claimant's **attendance**."

We will deny the claim.

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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this **30th** day of March **1979**.