

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22377
Docket Number CL-22242

Joseph A. Sickles, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and
 { **Steamship Clerks, Freight Handlers,**
 { **Express and Station Employees**
(Chicago, Rock Island and Pacific Railroad Company
(William M. Gibbons, Trustee)

STATEMENT OF CLAIM: Claim of the **System Committee** of the Brotherhood
CL-8481, that:

1. The Carrier violated the Clerk's Agreement between the Parties, when on September 5, 1975 it dismissed Clerk J. P. **Bowen** from the service **based** on charges **not** substantially **proven**, and

2. The **Carrier's** action in **dismissing** Mr. **Bowen** was **unjust**, unreasonable, arbitrary and capricious and an abuse of Carrier's discretion. The discipline assessed **was** too harsh and excessive, and

3. Clerk J. P. **Bowen** shall **now** be reinstated to the service of the Carrier with seniority and **all rights** unimpaired, **and be** compensated for all wages lost, from date of **dismissal until** date he **is** so reinstated.

OPINION OF BOARD: On August 28, 1975, Carrier notified the Claimant of an investigation to **determine** responsibility, if any, for an asserted refusal to **follow** certain **instructions**.

Subsequent to the investigation, the **Claimant was dismissed** from the Carrier's service.

The **Claimant** **urges** that the Carrier **erred** when it found him guilty of **insubordination** because (even though the Claimant failed to drive a mail truck when 80 instructed) the Carrier did **not attempt** to **ascertain the reason why the employe refused to carry out instructions**. Moreover, he **asserts** that he was **"set up"** by the Carrier Official.⁹ Who had instructed him to **perform two divergent duties** on the day in question, and it **was impossible** to obey all **instructions**. The Claimant also **asserts** that the **least Senior clerk usually drove the mail truck** and he was **not the least senior employe** on the day in question.

At the investigation, the Foreman of the Mail Center stated that the employe refused to fulfill the order because he had "six years seniority and that he wasn't dressed to drive the mail truck."

It is noted that distribution and delivery of messages and mail is a part of the duty and responsibility of the Claimant's job, and a driver's license is a requirement of the position. Further, it is interesting to note that the Claimant concedes that he refused to drive the mail truck approximately one hour after his representative explained to him that he could not refuse to do any particular job.

Our review of the record in its entirety, including the transcript of investigation, fails to reveal any factors to us upon which we can reasonably base a conclusion that the Carrier "set up" this employe, or that it was unduly unreasonable on the day in question.

Regardless of what original assignment may or may not have been made, it is clear and should be obvious to employes that a Carrier has the right to alter instructions and to require additional or alternative duties. If the employe feels that the Carrier's request is inappropriate, then, of course, he has contractually provided avenues of recourse and the record here affirmatively shows that this employe was aware of that method of relief.

We find no evidence to alter the conclusion reached by the Carrier that this employe was insubordinate and that discipline was appropriate. Nonetheless, we question, under all of the facts and circumstances as we know them, whether the imposition of a termination from service was appropriate. Upon a consideration of the entire record, we are inclined to find that such a penalty was arbitrary in this case, and we will restore the Claimant to service, but without back pay.

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 Employes involved in this dispute are respectively Carrier and Employes 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 discipline imposed was excessive.

A U A R D

The termination is set aside. The Claimant shall be restored to service, with retention of seniority and benefits, but without compensation for wages lost during the period of the suspension.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

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