

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Aware Number 22395
Docket Number CL-22404

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and
{ Steamship Clerks, Freight Handlers,
{ Express and Station Employees
{ Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the System Committee, of the Brotherhood (GL-8521) that:

(a) Carrier violated the Agreement when it **wrongfully** suspended Relief Agent **F. W. Morrical**, from the **service** of Carrier for failure to comply with Operating **Department Rules "A", "B" and "H"**.

(b) **Carrier** now be required to clear record of Relief Agent **F. W. Morrical** of all charges, with pay for all time lost due to five (5) **days** suspension from the service of Carrier **commencing November 8, 1976 through November 12, 1976.**

(c) Carrier now be required to pay Relief Agent **F. W. Morrical** for attending **investigation** on **November 2, 1976.**

OPINION OF BOARD: On October 29, 1976, Claimant was advised to attend a formal **investigation concerning** alleged "...desertion from your **assignment...at approximately 4:00 p.m., Wednesday, October 27, 1976...**"

Subsequent to the **investigation**, Claimant was found guilty of **violating Operating Department Rules "A", "B" and "H" and was suspended** from service for five (5) **days.**

Claimant was assigned to the **7:00 a.m. to 4:00 p.m. shift** on the day in question, and he did not leave the office until **4:00 p.m.**
Rule 32 states:

"No overtime hour⁶ will be paid for unless worked by direction of proper authority except **in cases** of emergency where advance authority is not obtainable."

Claimant asserts that he was neither instructed nor authorized to work overtime on the day in question, as **provided** in the cited rule. Therein lies the basis for this dispute because the Carrier is of a contrary view.

Accordingly, it becomes necessary for us to **determine** if there is anything of record which would **warrant our** disturbing the credibility resolution in **this** case.

On the day in question, the Claimant did not **complete certain** billing, and when he was preparing to **leave at** the end of his **shift**, the Assistant **Trainmaster** said:

"Where are you going, you have to bill the grain train."

But, Claimant asserts that the Trainmaster did not say **"...when** I had to bill it."

Carrier asserts that the **Employee** had a responsibility to complete the duties connected with his assignment and if it required overtime, he should **have** requested permission to work the necessary **overtime**. The **Assistant Trainmaster** confirms that he told the **Employee**, at 4:00 p.m., **"...You know you have to bill the grain train..."**, but the Claimant left. It is conceded 'that no one specifically **instructed the Employee to work overtime**.

We find no basis to upset the discipline because the Hearing Officer considered certain operating rules when, in fact, they related - at least in part to the specific charge. A finding that the **Employee** violated Rule "H" - which prohibits desertion from duty - is permissible when the **Employee** is charged with 'desertion.'

The term "desertion" **may** very well convey different concepts to different **individuals**. Certainly, this Employee did not depart the premises *during* a work shift; but we feel that the *term* is broader than that and it prohibits this type of activity. We **will** grant that the **Employee** needed authority to work overtime, but a *fair* reading of the record suggests that this Employee had a reasonable basis to believe that some conduct was expected of him. When an **Assistant Trainmaster** said **"...where are you going, you have to bill the grain train..."** it **was**, at that **point**, obvious that some particular activity was expected and a loyalty **to** the employer required the Claimant, **at the very least**, to ask what the **Supervisor** meant by that rather **pointed** statement.

The fact that he was not specifically instructed to work overtime is explained by the testimony that it was presumed that he was going to the Post Office and that he would return to complete the task.

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:


Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1979.