

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22467
Docket Number CL-22419

Robert A. **Franden**, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(The Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8505) that:

1. The Western Pacific Railroad Company violated the Rules of the Clerks' Agreement when it arbitrarily and capriciously removed Mr. J. W. **Graham** from service on January 5, 1977, on inadequate charges that were unproven and failed to return him to service until March 15, 1977.

2. **The Western** Pacific Railroad shall now be required to compensate Mr. **J. W. Graham** for all **time** lost **from** and including **January** 5, 1977, until and including March 15, 1977.

OPINION OF BOARD: Claimant was dismissed from **the service** of the Carrier for violating Operating Rules 700, 706, 707 and 711 of The Western Pacific Railroad Company. Claimant was later reinstated leaving him with a 68-day suspension which the Organization alleges is excessive.

A special letter of instruction was issued on May 13, 1976 which provided that one Clerk Patton was not to be granted a leave of absence without the approval of the agent on duty. It further provided that a chief clerk or assistant clerk could grant a leave of absence for sickness if an agent could not be contacted subject to further instructions.

On November 24, 1976 Clerk Patton called in with a request to lay off for personal business. The record reveals that when Clerk Patton called in claimant attempted to contact the agent prior to allowing Patton to lay off. When claimant was unable to contact the agent or a **trainmaster** he allowed Patton to lay off. In that Clerk Patton was not laying off due to sickness the **claimant's** actions were counter to the special instructions letter of May 13, 1976.

As to the discipline assessed, we find that the facts of the case mitigate against a harsh penalty. While the **claimant's** actions were not in strict conformance with the instructions letter the facts reveal that claimant attempted to **comply with** those instructions and did not lay off Clerk Patton in a casual manner. **He** attempted to contact the agent or **trainmaster** and then warned Patton that he would be losing his holiday pay if he **layed** off. Claimant was taking his duties seriously. We find the discipline to be excessive and direct that claimant be compensated for all time lost in excess of **ten** days.

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 Agreement was violated.

A W A R D

Claim sustained in accordance with the **Opinion.**

AUG 23 1979

NATIONAL RAILROAD ADJUSTMENT BOARD
By **Order** of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of July 1979.