

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number 22498**
Docket **Number CL-22607**

Paul C. Carter, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(**Express and Station Employees**
(
(**Southern Pacific Transportation Company**
(**(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the **System** Committee of the Brotherhood
(**GL-8589**) that:

(a) The Southern **Pacific Transportation Company** violated the
current Clerks' Agreement when it dismissed Mr. E. W. **Genest** from
service September 9, 1976; and

(b) The Southern **Pacific Transportation Company** shall now be
required to **reinstate** Mr. **Genest** and to compensate him one day's **pay** at
the rate of **Bill Clerk Position No. 319, \$50.66 per day, beginning**
September 9, 1976, and continuing each work day thereafter until
returned to service with all rights unimpaired, including seniority,
insurance, hospitalization, and all other Agreement emoluments.

OPINION OF BOARD: Claimant entered the **service** of the Carrier as a **clerk**
on **January 12, 1971**. On **August 19, 1976**, he was
regularly **assigned as bill clerk at Carrier's Los Angeles Yard**.

Following a rather lengthy investigation conducted on
August 30, 1976, claimant was notified on September 9, 1976, of his
dismissal from service for violation of the following portions of
Rules 801 and 810:

Rule 801:

"Employees will not be retained in the
service who areinsubordinate....."

Rule 810:

"Employees must report for duty at the
prescribed time and place, remain at their
post of duty, and devote themselves exclusively
to their duties during their tour of duty.
They must not absent themselves from their
employment without proper authority...."

The Board has carefully reviewed the transcript of the investigation and finds substantial evidence to support aviolation of the cited rules. At approximately 6:15 P.M., August 19, 1976, claimant was instructed by the Assistant Chief Clerk to drive a carryall truck to Carrier's shop area and pick up a train crew. The Assistant Chief Clerk testified that claimant responded by stating that if he had to work as a messenger, he would be sick and to mark him off. Subsequently claimant was instructed by Carrier's Assistant Terminal Agent to drive the carryall truck to the shop area to pick up the train crew. Claimant again stated to mark him off sick. The Assistant Terminal Agent stated that he did not give permission to claimant to be off; that he asked the claimant the nature of his illness and claimant responded "...anything you want to call it, I'm going home sick."

We are inclined to agree with the Carrier's description of the case as a "knee-jerk claim of illness in response to an order to perform a service the employee considers undesirable." The Board does not condone such action by any employee. However, it would seem that the time claimant has been out of service should be sufficient discipline for the offense.

We will award that claimant be restored to service, with seniority rights unimpaired, but without pay for time lost.

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 permanent dismissal was excessive.

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Claim sustained to the extent indicated in the Opinion
and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paul*
Executive Secretary

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