

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22554  
Docket Number CL-22536

Paul C. Carter, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( **Express** and Station **Employees**  
(  
(**Richmond**, Fredericksburg and Potomac  
( Railroad Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood  
(GL-8619) **that:**

1. Carrier acted arbitrarily, capriciously and in a harsh and discriminatory **manner**, violating **Rule** 17 and other roles of the Agreement when on August 18, 1977, it dismissed **from service** Clerk L. A. Lester retroactive to March 10, 1977.

As a consequence, Carrier shall:

2. (a) Clear the service record of **L. A. Lester** of charges set forth in Mr. **E. W. Devine's** letter of **August 8, 1977** and any reference in **connection** therewith.  
  
(b) Compensate **L. A. Lester** for all time lost and **other** benefits taken from him as a result of Carrier's action.

OPINION OF BOARD:

Claimant entered Carrier's service as a clerical **employee** at Carrier's Potomac Yard **on** July 18, 1974. On March 4, 1977, he was working **from** the clerical extra list at Potomac Yard. He was called for **and** accepted position of **Keypunch** Operator for tour of duty working 4:00 to 12:00 midnight. At 8:00 P.M. he marked off sick.

**On** March 9, 1977, an investigator of the Alexandria Police **Department came** to the office of Carrier's Manager of Personnel Resources at **Potomac** Yard and requested a copy of claimant's work record for March 4. The investigator also advised the Carrier's officer that claimant had been charged **with** raping a sixteen year old

female shortly after 8:00 P.M., on March 4, 1977; that claimant, accompanied by his attorney, had **surrendered** himself to the Alexandria Police Department on March 8, 1977, and had been released on **\$3,000.00** bond.

On **March** 10, 1977, Carrier's **Manager** of Personnel Resources removed **claimant** from service and issued the following charge against him:

"On March 9, 1977, we received information to the effect that you **have** been charged with a felony by the Alexandria Police. Due to the nature of the felony **and** in the interest of the Company and its employees, it is **necessary** that **you** be held out of service and you are being charged with conduct unbecoming an employee. **An** investigation of this charge is scheduled for Wednesday morning, March 16, 1977, at 10:00 a.m., in the Office of Superintendent, Potomac Yard.

"If **you** desire to postpone the formal investigation of this **matter** until the question of the alleged felony charge has been resolved, please contact **my** office and we **will** arrange to postpone the **investigation** to a mutually agreed-upon date."

**At the** request of the claimant, the investigation was postponed.

The felony charge against the claimant came up in the **Circuit** Court of the City of Alexandria on July 20, 1977, and was **nolle prosequed**.

Investigation of the charge preferred by Carrier against the **claimant was** conducted on August 5, 1977. A copy of the transcript of the investigation has been made a part of the record. **On** August 18, 1977, claimant **was notified** of **his** dismissal from **service**, the letter of dismissal reading in part:

"It is, therefore, obvious that you marked off **duty** on March 4, 1977, under false pretense to meet the party you became **involved with** and you continued to **remain** off duty under the pretense of sickness for several days thereafter, which absence was the apparent result of the situation in which you had involved yourself."

In further **handling** of the dispute on the property the Carrier's highest officer of appeals stated:

"...**Claimant** was charged with **conduct unbecoming** an **employee**, and if abandoning an **assignment in the** middle of a shift and marking off sick **under** false pretenses is not unbecoming conduct, I don't know what would be."

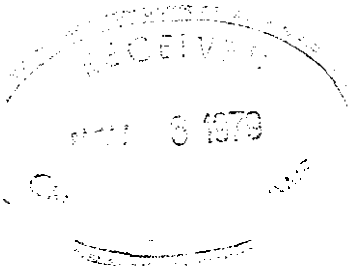
The Organization then contended that claimant "...**was** charged with one offense as contained in the notice and was found guilty and dismissed for another offense than **that** with which charged."

In their submissions to the Board the positions of the parties are about the same as on the property, the Organization contending that the charge preferred against claimant of unbecoming conduct related directly to the outcome of the felony charge, while claimant was dismissed for falsely marking off account of illness at 8:00 P.M., March 4, 1977. The Carrier contends before the-Board:

"...**Claimant** was charged with conduct unbecoming an employee and, as Carrier will show, the evidence adduced at the investigation was sufficient to convince Carrier that this Claimant abandoned his assignment in the middle of a shift and marked off sick under false pretenses. Such conduct, under an acceptable definition, is clearly unbecoming an **employee.**"

With the issue thus drawn, the Board has carefully reviewed the charge and the transcript of the investigation. The letter of charge says nothing about claimant abandoning his assignment or marking off under false pretenses. The Carrier's officer who preferred the charge stated in the investigation that the basis for the charge against claimant was the information that he received from the investigator of the Alexandria Police **Department**. The memorandum that he prepared concerning the inquiry of the investigator related only to the felony charge. When questioned as to why he had taken claimant out of **service** on March 10, 1977, he stated:

"Q. - Why did you take Mr. Lester out of service at **that time?**



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A. - The nature of the alleged felony charge caused me to be concerned about permitting Mr. Lester to **return** to work among the other employees. I felt **that** his presence on the job would create an attitude **among** our employees, particularly the female employees, which would be detrimental to their work."

From the foregoing, the Board can only conclude that the charge preferred against Claimant by the Carrier related directly to the felony charge. We are quite sure that if the officials of the Carrier had desired to charge Claimant with abandoning his assignment by marking off under false pretenses, they would have experienced no difficulty in doing so **in** clear and **unmistakable** language.

Based upon the record before us, the Board finds that the claim **must** be sustained. It is **well** settled that an employee may not be charged with one offense and dismissed for another. Pay for time lost by the Claimant while out of service should be computed according to the Agreement - Rule 17(h).

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and Employee 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 as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1979.