

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award **Number** 22693
Docket **Number** CL-22719

Paul C. Carter, *Referee*

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**

PARTIES TO DISPUTE:

(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8649) that:

(a) **The Southern Pacific Transportation** Company violated the Clerks' Agreement when it dismissed Mr. R. D. **Bristow** from service following formal investigation at which its **charge** was not sustained; and,

(b) The Southern Pacific Transportation Company shall now be required to reinstate Mr. **Bristow** and to allow one days' compensation at the rate of Relief Position No. 18 beginning October 28, 1977 and continuing each work day thereafter, plus insurance, seniority and all other rights unimpaired, **until** he is returned to service.

OPINION OF BOARD: Following an investigation conducted on October 13, 1977, claimant, who had been in Carrier's service as a clerk since May 21, 1973, was dismissed from service on October 28, 1977, for alleged violation of the second paragraph of Carrier's Rule 810, which reads:

"Continued failure by **employees** to protect their employment shall **be** sufficient cause for dismissal."

The Board has carefully reviewed the transcript of the **investigation** conducted prior to claimant's dismissal, as well as the submissions of the parties. The record shows that claimant frequently laid off sick, but in each case he telephoned his employer for **permission** to be absent and all such requests were granted.

2 Based upon the entire record, the Board is of the considered opinion that Carrier's actions in dismissing **claimant** for **accumulated** absences, each of which absence was handled **in** the usual **manner** and authorized by supervisory personnel, was **arbitrary** and **unreasonable**. If the Carrier were in doubt as to claimant's illnesses, **it** could **have** required him to furnish a doctor's statement in each instance, or could have had him examined by Carrier's designated Company physician to evaluate his physical condition to continue in service.

11 Our attention has also been called to the fact that absence because of illness is excluded from the Leave of Absence Rule (Rule 39) of the **Agreement**.

5 Based upon the record before it, the Board cannot uphold the Carrier's dismissal of claimant. Neither does the Board feel justified, in view of claimant's absentee record, **in** awarding him pay for each day from date of dismissal, as claimed. We will award that claimant be restored to service with seniority rights unimpaired, and that he be compensated for each day lost, except for the first six months following his **dismissal**, or **from** April 28, 1978, his earnings from that date be computed in accordance with **Rule** 52 of the applicable Agreement.

The *Organization* has submitted no Agreement support for that portion of the claim pertaining to insurance, and it is denied.

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 violated.

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Claim sustained to the extent indicated in Opinion.

NATIONAL BAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

AW. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.