

- NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22694
Docket Number CL-22728

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-8658) that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it dismissed **employee J. W. Hardison** from service following investigation at which the charge was not proved; and,

(b) The Southern Pacific Transportation Company shall now be required to allow Mr. **Hardison** full back pay beginning January 25, 1978, and continuing each day **thereafter** until reinstated to service with all Agreement rights unimpaired, including seniority and health and welfare benefits..

OPINION OF BOARD: This docket involves the same parties and a similar factual situation as involved in Award No. 22693.

Claimant, who had been in service as a clerk since February 24, 1970, was dismissed from service on January 25, 1978, for alleged violation of the second paragraph of Carrier's **Rule** 810 reading:

"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, and the submissions of the parties. The record shows that claimant frequently called his employer and reported that he would not be able to work because of sickness or for **some** other reason, and in each instance permission to be off was granted. The Carrier refers to some of the absences as

being "excused" and others as "not excused."

3 **Based upon** the entire record, the Board is of the considered opinion that Carrier's action in dismissing claimant for accumulated absences, each of which 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 illness in any instance, it could have required him to furnish a doctor's statement, or could have had him examined by Carrier's designated Company physician to evaluate his physical condition to continue in service. To attempt to classify an absence because of illness as an "unexcused absence," as some of the Carrier's officials seem to do, is untenable.) Our attention has been called to the fact that absence because of illness is excluded from the Leave of Absence Rule (Rule 39) of the Agreement.

Based upon the record before it, the Board cannot uphold Carrier's dismissal of claimant. Neither does the Board feel justified, in view of claimant's absentee record, in awarding him full back pay for each day following his dismissal, as claimed. We will award that claimant be restored to service with his former seniority, and compensated for each day lost, except for the first six months following his dismissal, or from July 25, 1978, his earnings from that date to be computed in accordance with Rule 52 of the applicable agreement:

The Organization has offered no Agreement support for that portion of claim including "health and welfare benefits," 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

Award **Number** 22694
Docket **Number** CL-22728

Page 3

That the Agreement was violated.

A W A R D

Claim sustained to the extant indicated in Opinion.

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

ATTEST: *A.W. Paulos*
Executive Secretary

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