

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award **Number** 22792
Docket Number **CL-22747**

Paul C. Carter, Referee

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

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-5743)
that:

1) The Carrier acted in an arbitrary and capricious manner when **it dismissed** Mr. Jim Spoon from the service of the Carrier as a result of a hearing held on December 12, **1977**.

2) Carrier shall now be required to return Mr. Jim Spoon to the service of the Carrier with all rights and privileges unimpaired and **compensate** him for all time lost beginning on or about December 7, 1977, and continuing until corrected.

OPINION OF BOARD: At **approximately 4:05** p.m. on December 7, **1977**, while on duty, the **claimant** and another clerical **employee** entered into a physical altercation in the Carrier's North Yard Office, Denver, Colorado. After an interview by the officers in charge, both the clerical **employees** were removed from the service. On December 8, 1977, they were instructed to appear for a formal **investigation** on December 9, 1977. The investigation was rescheduled for December 12, 1977, and was conducted on that date. A copy of the transcript of the investigation has been **made** a part of the record. Following the investigation, both **employees** were notified of their dismissal from the service.

The Organization contends that the interviews by the officers in charge immediately following **the altercation** and prior to the two clerks being removed from the service on December 7, 1977, was in violation of the Agreement. The Board does not find such contention valid. The Agreement provides that an employee may be held out of service pending investigation under Rule 24. It was not a violation of the Agreement for the officers in charge to determine if such action was warranted, which was the purpose of the interviews.

On careful **review** of the record before the Board, including the transcript of the investigation, we find that none of claimant's substantive procedural rights was violated. There was substantial evidence adduced at the investigation to support the conclusion that claimant violated Carrier's General Notice and Rules concerning the conduct of **employees**. His actions, together with his prior record, which was far from satisfactory, fully justified his dismissal from the service. There is no proper basis for this Board to interfere with the discipline imposed, which we find was not arbitrary, capricious or in bad faith.

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 not violated.

A W A R D

Claim denied.

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

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1980.