

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award **Number** 22798  
Docket **Number** CL-22923

Paul c. carter, Referee

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

**PARTIES TO DISPUTE:** (   
(Chicago and North Western Transportation Company

**STATEMENT OF CLAIM:** Claim of the System **Committee** of the Brotherhood (**GL-8830**)  
that:

1. Carrier violated the Agreement Rules, particularly Rule 21,  
when by letter dated **May** 26, 1978 it dismissed from service Mr. **Larry** R. Weir,  
Janesville, Wisconsin, account investigation held on May 20, 1977, and

2. Carrier shall now be required to reinstate Mr. Larry R. Weir  
to service of Carrier with all rights unimpaired and with full pay for each  
work day withheld from service, beginning May 27, 1978 and continuing until  
the violation is corrected; to include benefits that may be due him under  
the provisions of Travelers Group Policy GA-23000 and Aetna Policy GP-12000.

**OPINION OF BOARD:** Claimant, who had about ten years of service with the  
Carrier, was employed as a telegrapher-clerk at South  
Janesville, Wisconsin. Access to the yard office is by an unpaved gravel  
road. **On** March 14, 1978, claimant advised Carrier's Division Manager that  
effective March 15, 1978, he would no longer drive his automobile over this  
road, alleging that it was in an unsafe condition "due to the multitude of  
potholes."

**On** March 15, 16 and 17, 1978, claimant did not report for duty.  
**On** March 15, 1978, the **Trainmaster** offered to transport claimant over the  
road to the yard office, but claimant refused. As result of claimant's  
actions on March 15, 16 and 17, 1978, he was served with three notices of  
investigation as follows:

'Your responsibility for failure to properly protect your  
assignment, **7:59** AM, Job 036, Yard Clerk, on March 15, 1978  
at South Janesville from **7:59** AM to **3:59** PM."

'Your responsibility for failure to comply with instructions  
issued to you by Mr. K. J. Dove, Trainmaster-South Janesville  
at about **9:53 AM** on March 15, 1978 while employed as a yard  
clerk at South Janesville."

'Your responsibility for your failure to comply with instructions from **Trainmaster** K. J. Dove that you report to South Janesville Yard Office to protect **your assignment** on March 16 and March 17, 1978 and your failure to protect your **assignment** on the above dates while assigned to Job **036-Yard** Clerk at South Janesville, Wisconsin."

By agreement the three charges were combined into one investigation, which was conducted on Saturday, May 20, 1978. A copy of the transcript of the investigation has been made a part of the record. Following the investigation, claimant was dismissed from service on May 27, 1978.

**It** is well settled that **employees** must comply with instructions of their superior officers and complain later if they consider that they have been mistreated, except **where** a real safety hazard **may** be involved. If an employee contends that a safety hazard is involved, then the burden is on the employee to prove that such situation actually exists.

The Board has carefully reviewed the transcript of the investigation. During the days that claimant refused to work, a number of persons operated their automobiles over the road involved, without damage to their automobiles or personal injuries. We are, therefore, forced to the conclusion that there was no proper basis for claimant's refusal to perform service on the dates involved.

Discipline was warranted. However, based on the entire record, the Board is of the considered opinion that the time that claimant has been out of service should constitute sufficient discipline for the offense. We will award that claimant be restored to the service with seniority and other rights unimpaired, but without any compensation for time lost while out of service. The claimant should clearly understand, however, that the purpose of this award is to give him "one last chance" to become and remain a competent and responsible employee, and that further major infractions by him will result in the **permanent** termination of his services.

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;

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That the Carrier and the Employes involved in this dispute are respectively Carrier and **Employes** 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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

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.