

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22820
Docket Number CL-22718

Martin F. Scheinman, 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 (CL-8648) that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it suspended Mr. R. D. Bristow from service for ninety (90) days following formal investigation at which the charge for which he was tried was not sustained; and,

(b) The Southern Pacific Transportation Company shall now be required to allow Mr. R. D. **Bristow** one days' pay at the rate of Relief Position No. 18 beginning March 2, 1977 and continuing each work day thereafter, plus insurance, seniority and all other rights unimpaired until returned to service.

OPINION OF BOARD: Claimant, R. D. **Bristow**, following formal **investigation**, was suspended from service for a period of 90 days, effective March 2, 1977 through May 31, 1977 for alleged violation of the second paragraph of Rule 810 of the Agreement between the parties. The second paragraph of Rule 810 reads:

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

Carrier claims that Claimant has a record of excessive absenteeism, forming a pattern of being in conjunction with his designated rest days. In its view, Claimant's record warrants the discipline imposed. The Organization contends **Claimant's** absenteeism was related to illness and that Carrier excused and accepted each occurrence.

A careful analysis of the transcript of the investigation conducted prior to the discipline imposed, and the submissions of the parties, convinces us that the charge cannot be sustained. While Claimant's absenteeism is admittedly extensive, the record indicates that he always followed the usual **and** customary procedures, e.g., telephoning supervision and receiving permission to be absent. There is no showing that Claimant's absences

were fabricated. There **is** no evidence to dispute Claimant's need to be excused due to his physical condition. Claimant is not being **disciplined** for "malingering."

Rather, it is clear that **Claimant is** being disciplined for being sick too often. Rule 810 does not contemplate discipline for this. The rule does not provide for or permit the imposition of discipline for continued sickness. See Award 22693. Therefore, we **must** conclude that Claimant is not guilty of violating Rule 810.

As to the appropriate remedy, the Organization asks for one day's pay for each of the days of Claimant's suspension. Given Claimant's absenteeism rate of almost **30%**, this remedy is unacceptable. After all, Claimant is not entitled to receive a windfall. Therefore, we will award that Claimant be restored to service with seniority rights unimpaired, **and** that he be compensated for each day lost, except the first thirty (30) days following his suspension, his earnings to be computed in accordance with Rule 52 of the applicable Agreement. This remedy has previously been adopted by this Board. See Award 22693.

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 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 Agreement was violated.

A W A R D

Claim sustained to the extent and in the **manner** indicated in the opinion.

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

ATTEST:


C.W. Pauls
Executive Secretary

Dated at Chicago, **Illinois**, this 18th day of April 1980.