

NATIONAL **RAILROAD ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22027
Docket Number CL-22891

Paul C. Carter, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight **Handlers**,
(Express and Station Employes
PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the **System Committee** of the Brotherhood (GL-8742)
that:

(1) Carrier failed to adhere to the **Agreement** between the Parties when, on May 18, 1978, Mr. M. **M.** Gibson, III was assessed discipline of **dismissal** from Carrier's service which was excessive punishment, and

(2) Carrier shall **now** restore Mr. M. M. Gibson, III to service and compensate him for eight (8) hours' pay beginning May 18, 1978, and continuing for each subsequent date until such **restoration** to Carrier's service **is** effected.

OPINION OF BOARD: At the time of the occurrence giving **rise** to the dispute, **claimant** was assigned to the clerical Guaranteed **Extra** Board at Cincinnati, Ohio. On April 13, 1978, claimant **was** called to fill a vacancy on Position C-75, Janitor, **3:30** P.M. to 12 midnight. **He** refused to accept the call from the clerk who **was** responsible for the calling of extra **employees**. The Terminal Service **Manager** then called claimant and claimant told him that he was refusing to work **the** janitor position. **Claimant was** then served the following notice:

"Please attend investigation in the Office of Assistant **Superintendent**, 2815 Spring Grove Avenue, Cincinnati, Ohio at **1:30** P.M., Monday, April 17, 1978.

You are charged with refusing to accept position of Janitor, Position C-75, for April 13, 1978, **assignment 3:30** P.M. to **12:00** Midnight.

Arrange for any witnesses and/or representative if you desire."

The investigation was conducted as scheduled, and on April 26, 1978, **claimant** was notified of his dismissal effective **12:01 A.M.**, May **18**, 1978.

A copy of the transcript of the investigation has been **made a part** of the record. A review of the record **shows** that **none** of claimant's substantive procedural rights **was** violated. The transcript **contains substantial** evidence, including claimant's statement, in support of the charge,

Claimant should have protected the vacancy for which called **and** then handled through the grievance procedure if he considered that he was being mistreated or improperly called.

In the handling on the property, the Carrier **stated that claimant** had been disciplined on two previous occasions, once on March 25, 1976, when ha failed to protect his **assignment**, and again on **March** 27, 1976, when he refused **to** make a track check.

Baaed on the entire record, there is no proper **basis** for **this Board** to interfere with the discipline **imposed** by the Carrier.

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 Employee 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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1980.

