

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22830
Docket Number CL22720

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 (**GL-8653**)
that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it **summarily** and unconscionably dismissed Mr. A. **F. Henninger** from service following investigation at which the charge brought against **him** was not proved; and,

(b) The Southern Pacific Transportation Company **shall** now be required to reinstate Mr. **Henninger** to service with all rights of seniority, **health and welfare, and vacation** unimpaired and that he be **compensated a days'** pay at the rate of Agent at Newark for each and every day, **Monday** through Friday that he is withheld from service beginning January 5, 1978, and continuing until such **time** as he is restored to service including any **overtime** earnings to which he **would** otherwise have been entitled.

OPINION OF BOARD: Claimant, A. F. **Henninger**, after **formal** investigation, was dismissed from service for alleged insubordination, on January 5, 1978. On February 3, 1978, **Claimant** was reinstated to service, on a leniency basis, but without compensation for **time** lost. In all, he was out of service a total of twenty-two days.

Carrier contends that Claimant failed to follow a **verbal** order given by Assistant Terminal Agent M. B. Dalton concerning input of the **OFC** Report to the computer. In its view, Claimant's failure to **comply** with Dalton's direction warranted the discipline imposed, pursuant to Rule 801 of the **Agreement** between the parties. The Organization, on the other hand, insists that Claimant is not guilty of insubordination.

Rule 801, in relevant part, states:

"Employer, will not be retained in service who are . . .
insubordinate"

Carrier **has** the burden of establishing that **Claimant** is guilty of violating the Rule. Carrier **must** prove that **Claimant** was insubordinate **on January 5, 1978.**

A thorough analysis of the record of the investigation, as well as the **submissions** to this Board, **convince** us that Carrier **has** failed to meet that burden here. That is, Carrier has failed to prove the necessary components of insubordination. For example, Carrier did not **establish** that Claimant refused to comply with a direct order from his supervisor. Similarly, Carrier failed to **prove** that **Henninger was** placed **on** notice or **informed** that his behavior was potentially insubordinate.

In sum, we are **convinced** that Claimant did not, at any time, flout authority or purposely defy an "order." If he is guilty of anything, it **is** a mistake as to the choice of work priorities. This is not **insub-**ordination in any sense of the word. Therefore, we will **sustain** the claim. Claimant shall be compensated in accordance with Rule 52 of the parties' Agreement,

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 Employee 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** violated.

A W A R D

Claim sustained.

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.

