

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22850
Docket Number CL-22670

George S. Roukis, Referee

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

PARTIES TO DISPUTE: (.

(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (**GL-8681**)
that:

(a) Carrier violated the Agreement at Birmingham, Alabama, when on August 25, 1977, it suspended Mr. R. L. **Ellison**, III, Relief Crew Dispatcher, from its service for a period of fifteen (15) days, beginning August 26, 1977, and extending through September 9, 1977, for an alleged failure to protect his assignment and being absent without proper authority from his assignment on Saturday, August 13, 1977, and an excessive absenteeism from his assignment as Crew Dispatcher, Norris Yard, Birmingham, Alabama.

(b) Carrier shall now be required to compensate Mr. R. L. **Ellison**, III, for all monetary loss sustained during the unjust suspension from service, at the \$57.38 applicable daily rate of pay for his assigned position.

OPINION OF BOARD: **An investigation** was held on August 19, 1977 to determine the facts regarding **Claimant's** failure to protect his assignment and being absent without proper authority from his Relief Crew Dispatcher's position on August 13, 1977 at 7:00 A.M. and to determine the facts respecting his alleged excessive absenteeism. Claimant was subsequently apprised by letter dated August 25, 1977 that the investigation disclosed that he was improperly absent on August 13, 1977 and affirmed the excessive absenteeism specification. This disposition was appealed on the property and is presently before this Division.

In reviewing this case, particularly the precise pattern of events surrounding Claimant's telephone conversation with the Chief Yard Clerk at approximately **2:50** A.M. on August 13, 1977, it is difficult to infer from the record that Claimant was clearly under the impression that he was given permission to mark off that day.

To the contrary, he was specifically requested to call the Agent Terminal Control at that moment, but he refused to do so **apparently** because of his fatigued condition. Careful reading of the investigative transcript shows that he was unmistakably instructed to call the Agent **Terminal** Control

regarding his request to be marked off from his assignment and he did not do so. Under the conditions that ensued at that time, valid permission could only be secured from the Agent Terminal Control, not the Chief Yard Clerk. **Claimant** did not abide by these instructions and as such was **impermissibly** absent on August 13, 1977.

On the other hand, we do not find that Carrier demonstrated, consistent with our **evidentiary** requirements, that he was excessively absent and thus we are compelled to dismiss this portion of charges. Because of this finding, we will reduce the original fifteen (15) days suspension penalty to eight (8) days suspension to comport with the **gravamen** of the first specification and direct that the Claimant be **made** whole for the difference in time lost. We hasten to add, h-er, that we expect Claimant to observe strictly all supervisory instructions in the future as we will not look kindly upon any recidivist behavior.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 discipline was excessive.

A W A R D

Claim sustained to the extent expressed in the Opinion.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1980.