

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22890
Docket Number CL-22767

Martin F. **Scheinman**, Referee

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

STATEMENT OF CLAIM: Carrier did **not** violate the agreement with the Brotherhood of Railway, **Airline and** Steamship Clerks as alleged, when it dismissed Mr. O. V. Mitchell, Clerk at Columbus, Georgia, from the service of the Carrier for cause **on** October 27, 1977, following a fair and impartial investigation.

Since the agreement was not violated, Mr. Mitchell is **not** entitled to payment for all **time** lost, including any overtime to which **he would** have been entitled had he been in service from October 19, 1977 to January 19, 1978, as claimed in behalf of Mr. Mitchell by the Clerks' Organization.

Carrier's file CL-2719,-j

OPINION OF BOARD: After investigation, **Claimant**, O. V. Mitchell was dismissed from service on October 27, 1977. **Claimant** was subsequently reinstated on a leniency basis with his seniority unimpaired but without pay for time lost. In all, Claimant was out of service from October 19, 1977 through January 19, 1978.

Carrier charged **Claimant** with insubordination for refusing to obey the instructions of Superintendent R. **J.** Reilly to **come** to Reilly's office. While both parties have addressed, at considerable length, prior meetings, prior instructions and other possible prior insubordination, e.g., the refusal to perform certain work, these are not before us. As an appellate body, our concern is only the offense **Claimant** is actually **charged** with -- the refusal to comply with the **instructions** of Superintendent **Reilly** to enter the office.

The Organization contends that Claimant declined **to** enter Reilly's office because he wished to "prevent a confrontation at which he would have no witnesses to support his side of the story should the need arise." In its view, Claimant was not insubordinate.

The evidence conclusively establishes that **Claimant was instructed** to go into Reilly's office. **Claimant** heard the order. Be understood it.

The order was not unreasonable. Yet, Claimant steadfastly refused to obey the direct order unless he was afforded union representation. **He came to** the office door but despite repeated instructions he refused to enter it.

In relevant part, **Rule** C-3 -- Representation states:

"At investigations **and** hearings an employee may be assisted by **one** or more duly accredited representatives."

Under Rule C-3, Claimant is entitled to representation at an investigation or hearing. We **must conclude** that the meeting Claimant was instructed to attend **cannot** be characterized as either an investigation or a hearing. Father, we are persuaded that it was merely a meeting to discuss an employment problem.

Moreover, Claimant's behavior was not due to his belief that the meeting was a hearing or investigation, He acknowledged that he did not **know** the purpose of the meeting.

A supervisor may meet with an **employee** to discuss a job related matter without the necessity of having union representation. See Third Division Award No. 22152. The parties **have** provided that the Union is not required to be present at every discussion between an employe and his supervisor. Representation is only required at an investigation or hearing. This is the import of Rule C-3.

Thus, **Claimant** should have entered the room. He was obligated to obey the instruction. He did not and therefore, is guilty of insubordination as charged. As such, he is subject to appropriate disciplinary action.

As to the appropriate penalty, we are convinced that the 90 day suspension imposed is excessive. Given all of the **circumstances**, the 90 day suspension issued to Claimant should be reduced to a 60 day **suspension** and we do so find.

Finally, the Organization's procedural arguments, e.g., that the charge was not sufficiently precise and that the denial of the initial appeal did not meet the requirement for specificity are rejected.

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 **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 was excessive.

A W A R D

Claim of the Organization sustained to the **extent** and in the manner set forth in Opinion.

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

ATTEST:


Executive Secretary

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