

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22909
Docket Number CL-22924

Paul C. Carter, Referee

(Brotherhood of Railway, **Airline and**
(Steamship Clerks, Freight **Handlers,**
(Express and **Station Employees**
PARTIES TO DISPUTE: (
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8764)
that:

1. Carrier acted arbitrarily, capriciously and in a harsh and discriminatory **manner** when on August 8, 1978, it dismissed Clerk William Swain, **Sr.**, following an investigation held on August 2, 1978, such action being violative of the current Agreement dated January 1, 1975.

2. **As** a consequence of the above violation, Carrier shall:

(A) Reinstate William Swain, Sr. to the service with **seniority** and all other rights unimpaired.

(B) Clear Claimant's service record and allow compensation and all **other** benefits lost as a result of Carrier's violative act, as well as interest payment at the current rate on the amount of reparation due.

OPINION OF BOARD: Claimant bad about five years of service with the Carrier at the **time** of the occurrence giving rise to the dispute herein. On July 19, 1978, he was instructed to attend an investigation on July 26, 1978, on the charge: . -

"**You** are charged with insubordination and failure to protect assignment of A-Shift Crew Clerk, from 7:00 AM to 3:00 PM, at **Tilford** Yard on July 12, 1978, after being called for this job by C-Shift Chief Train Clerk J. L. Rice and instructed to protect **same** by Office **Trainmaster** D. E. **Strickland.**"

The investigation scheduled for July 26 was postponed and conducted on August 2, 1978. On August 8, 1978, claimant was notified of his dismissal from the service. A copy of the transcript of the investigation has **been** made a part of the record. A review of the transcript shows that **none** of claimant's substantive procedural rights was violated.

The record shows that on Wednesday, July 12, 1978, **claimant** was completing his regular third shift assignment as Piggyback Clerk at Carrier's Tilford **Ramp**, Atlanta, Georgia, when the first shift crew clerk position became vacant. Claimant was the only qualified available **employee** and he was called by the Chief Train Clerk to protect the assignment. When questioned as to **claimant's** response, the Chief Train Clerk stated:

"Q. Could you give us any information that you **have** in connection with his apparent failure to protect the job on this date?

"A. I called him and told him that he was going to have to protect it. **He** informed me that he had his wife's car **and** that he had to take it **home** to her and he couldn't work and I told **him** **that he was** the **only man** I had **and** he'd have to take that up **with** the agent on duty."

The Office Trainmaster testified in part:

"Mr. **Swain (claimant)** called me and told **me** that he had been called for the job, that he **couldn't** stay because he had to take his wife's car home. So I told Mr. **Swain that was fine I would wait in** the call office for him to **take** his wife's car home and come back and he said he could not do that. I told Mr. Swain that he had been called for the job and that he was to protect it. Again he said he couldn't do it. I told Mr. Swain I had no other choice, that I would have to hold him **out** of service pending an investigation
...."

All **employees** have an obligation to comply with instructions of their superiors, unless a real safety hazard is involved, which was not **in** the case herein. Claimant should have complied with the instructions, and if he considered that his rights under the **agreement** were being violated or that he was being improperly treated, he could have handled the matter through the grievance procedure. He could not be **permitted** to take matters into his own hands.

There is no proper basis for the Board to interfere with the discipline imposed.

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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *Alv. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of **July 1980**.