

NATIONAL RAILROAD **ADJUSTMENT** BOARD

**THIRD** DIVISION

Award Number 22963  
Docket Number CL-22854

**Rodney** E. Dennis, Referee

**PARTIES** **TODISPUTR:** ( Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station **Employes**  
(  
(Western Railroad Association

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-8735)  
that:

(a) The Association violated Rules 1, 2, 3, 27, and 28, **among** others, of the Rules Agreement when it arbitrarily dismissed Claimant B. P. Boyle from service June 3, 1978.

(b) Claimant should **now** be restored to service with all seniority rights unimpaired and his record cleared.

(c) **Claimant** is also to be paid for all lost time including medical expenses, if any.

**OPINION OF BOARD:** Following the suspension of **claimant**, B. P. Boyle, on June 3, a hearing was held on the property. Boyle, a **17-year employe**, was charged with failure to protect his assignment on June 2, 1977, being absent without authority on that date, and using foul and abusive language in a telephone conversation with the Assistant Manager of the Tariff Department (insubordination).

On June 14, 1977, as a result of that hearing, and after a review of claimant's personnel file, claimant was terminated from service.

Upon appeal of the decision, Carrier offered to **return claimant** to work, effective March 1, **1978**, on a leniency basis only and with the proviso that he serve a one-year probationary period and waive all rights, in writing, to a hearing during that time. Claimant refused the offer and the termination remained in effect.

Based on the record before us, this Board concludes that claimant would have been wise to have accepted that offer. Despite **the** fact that he was a long-term employe, his attendance **and** tardiness record was aptly described by Carrier as "horrendous." In fact, he had accepted a **five-day** suspension and a twenty-day suspension on two occasions in **the** past in recognition of his long history of absences and his lack of punctuality.

Obviously, claimant did not learn from that **experience**. His failure to appear at work--when required and **on** time--could not be tolerated by Carrier. This Board has noted in **numerous** awards that at the **heart** of the industrial contract between employer and **employee** is the requirement that the **employee** adhere to duly constituted rules of attendance. claimant in this case has consistently failed to do so.

Nothing in the record leads this Board to believe that Carrier was either arbitrary or capricious in its decision to terminate **claimant**.

Given the absence of questionable procedures on **the** part of Carrier or a failure to act reasonably in response to the **events** of June 2, 1977, the Board sees no reason to substitute its judgment for that of the employer.

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;

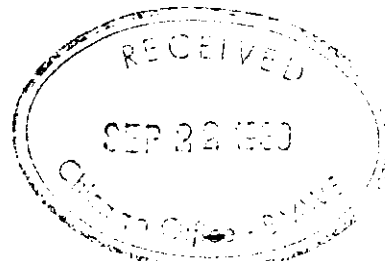
That the Carrier and the **Employees** involved in this **dispute are** respectively Carrier and **Employees** within **the** meaning of the Railway **Labor** Act, as approved **June** 21, 1934;

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:

*A. W. Pauls*  
Executive Secretary

Dated at Chicago, **Illinois**, **this** 28th day of August 1980.