

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23122**
Docket Number **CL-23210**

A. Robert Lowry, Referee

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

STATEMENT OF CLAIM: **Claim** of the System Committee of the Brotherhood
(**GL- 8958**) that:

Carrier violated the **Agreement** at Memphis, Tennessee, when on March 2, 1978, it dismissed Mr. S. K. Powell **from** all Carrier service for an alleged failure to protect **his** assignment on March 1, 1978.

For **this** violation, the Carrier shall be required to restore Mr. S. K. Powell to service with all rights unimpaired and compensate him for **all time** lost, beginning March 2, 1978, and continuing until such restoration is accomplished.

OPINION OF BOARD: On March 2, 1978, Mr. S. K. Powell, the claimant, was dismissed from the service of the Carrier for failure to protect his assignment as General Utility Clerk **with hours 11:30 to 8:30** on March 1, 1978. The Organization under Rule C-2 of the **Agreement** between the parties dated **May** 1, 1973, requested and was **granted** an investigation, which was held on March 16, 1978. Copy of the transcript of the investigation was made a part of the record.

At the investigation the claimant was represented by a duly accredited representative of the Organization. A **careful** reading of the transcript **reveals** claimant was given a fair and impartial hearing with the right to present witnesses and evidence to support his position. Claimant, however, presented no witnesses or evidence to refute Carrier's charges. Claimant admitted in **direct** testimony that he failed to protect his assignment. Claimant did call the Chief Clerk at **12** Noon, thirty minutes after the **starting** time of his assignment, but **the** testimony developed in the investigation supports Carrier's position that he merely wanted to go on record as calling at that time. He offered the Chief Clerk no excuse or reasons for being absent.

The record clearly shows claimant to be guilty of the charges. We must look to the claimant's personal record to determine if the punishment fits the crime or if it was excessive.

Claimant, as revealed by the record, was hired on September 2, 1969, and from that date until he was dismissed on March 2, 1978, he was suspended or reprimanded for absenteeism and late reporting on **eleven** occasions. The record further shows reprimands for failure to perform.

In **view** of claimant's personal record, the **Board** can find no justification for disturbing the Carrier's action in dismissing this **employee**.

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**

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 **15th** day of **January 1981**.

