

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23474
Docket Number CL-2325

Josef P. Sirefman, Referee

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

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8933)
that:

1. **Carrier acted in an arbitrary, capricious, unjust and discriminatory manner** when, without just cause, it **dismissed Agent-Operator** S. A. Black, West Norfolk, **Virginia**, from service of the Carrier on March 5, 1979.

2. In view of such arbitrary, capricious, unjust and discriminatory action, Carrier shall now be required to:

- (a) Restore Agent-Operator **S. A. Black** to service of the Carrier with all seniority, **vacation** and other rights unimpaired.
- (b) **Compensate** Agent-Operator **S. A. Black** for all **time** lost **commencing** with March **5, 1979** and continuing until Agent-Operator S. A. Black is restored to service, less outside earnings.
- (c) Pay Agent Operator S. A. Black any • ount he incurred for medical or surgical expenses for himself or dependents to the **extent** that such **payments** would have been paid by Travelers Insurance **Company** under Group Policy **GA-23000**, and in the event of death of **Agent-Operator** S. A. Black, the amount of **life** insurance provided for under said policy, in addition, **reimburse** him for **premium** payments he may have **made in** the provision of substitute health, welfare and life insurance.
- (d) Pay Agent-Operator S. A. Black any **amount** he incurred for dental expenses for himself or dependents to the extent that such payments **would** have been paid by Aetna **Life** and Casualty Company under Group Policy **GA-1200**, and **in** addition, reimburse him for premium payments he may have **made** in the **provision** of substitute dental insurance.

- (e) Pay Agent-Operator S. A. Black interest at the rate of eighteen (18) percent compounded **annually** on the anniversary on the claim for **amounts** due in Item 2(b) **supra**.

OPINION OF BOARD: Claimant Samuel A. Black, Agent-Operator, was served with a notice of **investigation** charging that he had been **on** paid sick leave for a significant period of **time** when he was physically capable of working, in violation of various rules and a Sick Leave Allowance agreement. The investigation was held **on** February **23, 1979** and Claimant was sent a letter of dismissal on March **5, 1979**.

A review of the record before this Board **establishes that** the February **12, 1979** notice of investigation provided sufficient particularity to permit Claimant to properly prepare a defense for the allegations therein contained, and that Claimant was afforded all the procedures provided by the contract. There was substantial evidence to sustain the Carrier's decision to discipline Claimant for this **serious** infraction. **However**, given Claimant's long service, a May 1959 seniority date, the penalty of termination is too severe. Accordingly **Claimant** is to be returned to service but without any back pay and **this discipline is** to constitute a last chance warning.

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 Employee within the meaning of the Railway labor Act, as approved June 21, **1934**;

That this Division of the Adjustment Board **has** jurisdiction wet the dispute involved herein; and

That the discipline assessed was excessive.

A W A R D

Claim **sustained in** accordance with the Opinion.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December **1981**.