

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23476
Docket Number CL-23326

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: ({Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station **Employees**
(The Atchison, **Topeka and Santa Fe Railway** Company

STATEMENT OF CLAIM: Claim of the **Committee** of the Brotherhood (GL-8982) that:

(a) Carrier violated the rules of the current Clerk's Agreement at **Los Angeles**, California, on April 24, **1978**, when it **wrongfully** discharged Ms. J. G. Lawson from service, and

(b) Ms. J. G. Lawson shall now be reinstated and **compensated** for all monetary loss suffered **commencing** April 24, **1978**, and continuing until such time that she is reinstated as a result of such **violation** of Agreement rules.

(c) The **Carrier** shall now be required to pay **10%** interest **compounded** daily on **all** wages wrongfully withheld frw Ms. J. G. **Lawson commencing** April 24, **1978**.

OPINION OF BOARD: Claimant **J. G. Lawson**, a Clerk, was on jury duty from January 11th to February **17th, 1977**. She filed for **pay** under the contract for said duty for February 1st through 4th end February 7th through 11th and was duly paid by the Carrier. About a year later, in the course of researching Claimant's attendance record, Carrier received a letter **from** the Jury Commissioner that Claimant "did not make herself available for jury service on the dates **mentioned**", **namely** February 1st through 4th and 7th through **11th, 1977**. This information was passed on to the Superintendent on March 31, 1978 and a notice of investigation was issued on April 5, 1978 for an April **12th** hearing. On April 24, **1978** Claimant was removed from service.

Rule 24-a of the contract provides for "a f-1 investigation, which shall be **promptly** held but in **any** event no later than 20 days **from** date the Company has factual knowledge of occurrence of the incident to be investigated...". The Organization contends that since Claimant put in for jury duty pay a year earlier the Carrier had "factual knowledge" then which it could have acted upon. Its failure to do so for so long bars the discipline. This contention is not persuasive. Submitting paperwork claiming **pay** for days not actually served on jury duty is an act of concealment. In such a circumstance the time when Carrier **is** in possession of "**factual** knowledge" is **when the concealment** is discovered. such discovery was made with the receipt , the letter from the Jury **Commissioner** that **Claimant** had not in fact served on the days she claimed to the Carrier. **From** that point on the Carrier proceeded within the time limits established by the contract.

With respect to the charge, Claimant acknowledged et the **investigation that** she **was aware** of the Court rule that on days she was not needed as a juror she **was** to report **back** to work; that she signed the payroll **form** given to the timekeeper, her signature certifying to the Carrier that her information **was** correct, for those days. **Claimant also** agreed that she received only \$95.40 from the Court covering but 18 days of jury service, well short of the **total days** she **claimed** to have been on duty **and** that she did not challenge that sum. **Finally any** certification of jury service Claimant **may** have furnished Carrier in applying for the pay is not **dispositive** of the issue, for the **March 29, 1978** letter from the Jury **Commissioner** makes clear that "Such forms **are** of a tentative nature pending review of actual attendance records on file **in** this office. Final payments are computed end made **from** such records". It was from this review that the check from the court, excluding the dates contained in the charge, **was** calculated. In **sum**, an **examination** of the record by the **Board** establishes that there **was substantial** evidence to sustain Carrier's decision to discipline Claimant. In view of the seriousness of the **violation** dismissal is reasonable.

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. Paulson

Executive Secretary

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

