NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23538
THIRD DIVISION Docket Number MS-23429

A. Robert Lowry, Referee

PARTIES TO DISPUTE: (E. W. Jefferson
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(Southern Railway Company

STATEMENT OF CLAIM: "Carrier violated the Agreement at Chamblee, Georgia, when on August 1, 1978, it unjustly dismissed me (E. W. Jefferson) from the service for an alleged failure to protect my assignment.

For this violation, the Carrier shall be required to restore me to service with all rights unimpaired and compensate me for all loss of wages, commencing August 18, 1978, and continuing until such restoration is accomplished."

OPINION OF BOARD: The Claimant, Mr. E. W. Jefferson, Sr., employed as a Claims Clerk by the Carrier, was incarcerated on June 13, 1978, for failure to comply with an order of the Superior Court of Gwinnett County, State of Georgia, to pay his ex-wife the sum of $1,968.00 on or before June 1, 1978. On June 15, 1978, the Carrier suspended Claimant for 15 days for failure to protect his assignment commencing at 7:30 AM June 14, 1978. Claimant failed to report to work at the expiration of the 15 day suspension and the Carrier on June 30, 1978, issued a second suspension of 30 days far failure to protect his assignment on June 30th. The second suspension latter specifically provided that Claimant would be considered as having abandoned his position and would be dismissed from service If he failed toreport at the end of that suspension. Claimant failed to report to work on July 31, 1978, the end of the second suspension. On August 1, 1978, Carrier by letter formally dismissed Claimant from service.

Claimant was subsequently released from jail on August 6, 1978, and he requested an investigation into the propriety of his dismissal from service, which was held on August 17, 1978. Copy of the transcript of the investigation was made a part of the record. A careful examination of the transcript indicates Claimant was given a fair and impartial hearing as required by the rules of the Agreement. On August 25, 1978, Carrier confirmed by letter its previous decision dismissing Claimant from service.

Claimant contended that it was through no fault of his that he was unable to protect his assignment, and, therefore, the penalty of dismissal was harsh and unfair to him. The record shows the Carrier as being exceedingly fair with Claimant. When Claimant failed to protect his assignment on June 14, 1978, Carrier merely suspended him for 15 days and when he failed to protect his assignment at the end of that suspension it suspended him for another 30 days but put him on notice that if he did not report for work at the end of the second suspension he would be dismissed from service. It is clear to this Board that Carrier exercised a great deal of compassion for this employe by giving him 45 days within which to clear up his problems with his U-wife. Had he done so, Claimant, would only have been confronted with a 15 day or no more than a 45 day suspension penalty. Thus, we must conclude that Claimant alone was responsible for his tenure in jail. Under these circumstances we will not disturb the discipline.

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 Employes involved in this dispute are respectively Carrier and Employes 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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1982.