

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23823
Docket Number CL-23851

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Kentucky and Indiana Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9339)
that:

1. Carrier violated the agreement, when it acted in an arbitrary, capricious and discriminatory manner and dismissed from service, vacation relief clerk, Mr. Wilbert Hayes, III.

2. Carrier shall, because of this violation:

(a) Promptly restore Mr. Hayes to duty with seniority, vacation and other rights unimpaired.

(b) Pay Mr. Hayes the amount of wages he would have earned absent the violative action, less outside earnings, commencing with Friday, August 10, 1979.

(c) Pay Mr. Hayes any amount he might incur 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 No. GA-23000 and, in the event of death of Mr. Hayes, pay his estate the amount of life insurance provided for under said policy. In addition, reimburse him for premium payments he may have made in the purchase of substitute health, welfare and life insurance.

(d) Pay Mr. Hayes interest at the statutory rate for the State of Kentucky for any amounts due under (b) above.

OPINION OF BOARD: Claimant was regularly assigned to the 11:00 p.m. to 7:00 a.m. L. S. Junction Interchange Clerk position. At about 10:50 p.m. on July 16, 1979, he telephoned the second shift L. S. Junction Interchange clerk, William Joyce, and advised Mr. Joyce he would be 10 or 15 minutes late. At approximately 12:30 a.m. Claimant again called Mr. Joyce and stated that he had overslept and was then on his way. He arrived at work at 12:55 a.m. He did not report his delay in reporting to his supervisor. On July 27, 1979, Claimant was notified:

"Arrange to be present in the Agent's office at 9:00 a.m., Thursday, August 2, 1979, for an investigation.

This investigation is being held to determine the facts and your responsibility, if any, for failure to show for

your assignment at the appointed time on July 26, 1979.
You were scheduled to work 11:00 p.m. - 7:00 a.m.
Interchange Clerk at L. S. Junction on this date.

If you desire a representative or witnesses arrange to
have them present."

The notice was signed by the Superintendent. The investigation was held as scheduled. A copy of the transcript of the investigation has been made a part of the record. On our review of the transcript of the investigation, we find that none of Claimant's substantive procedural rights was violated. The investigation was conducted in a fair and impartial manner. In the investigation the Claimant gave as the reason for the delay in reporting was the illness of his woman. He did not deny that he failed to report at the appointed time but acknowledged that he was 1 hour and 55 minutes late.

The regular second shift interchange clerk testified that Claimant called him about 10:50 p.m. and said he would be a little late; that he called again at 12:30 a.m. and said he was on his way, and the only explanation Claimant gave was that he overslept.

Claimant, in the investigation, for the first time, stated that his woman had been stricken with diabetes; that he worked all night and took care of her during the day, and that he simply overslept.

Claimant's prior record with respect to protecting his assignment and being late is far from satisfactory. He was charged with such offenses or cautioned on at least seven different occasions. He was the Claimant in Third Division Award No. 21355, wherein the Board saw fit to restore him to his former position with seniority rights unimpaired, but without pay for time lost while out of the service - some two and one-half years.

Claimant's actions in the present case, coupled with his prior record, fully warranted his dismissal.

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 Employee 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 over the dispute involved herein; and

That the Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

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