

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24120
Docket Number CL-24177

Edward L. Suntrup, Referee

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

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-9470)
that:

(a) **The** Carrier violated the Rules Agreement, effective December 1, 1949, reprinted January, 1958 to include amendment and agreements subsequent to December 1, 1949, particularly Rule 36, when it assessed discipline of dismissal on D. E. Beushausen, Clerk, Argo Yard, Ill. on January 22, 1979.

(b) Claimant **Beushausen's** record be cleared of the charges brought against him on December 26, 1978. (I.H.B. Docket **CLK-180**)

(c) Claim for 8 hours pay at the straight time rate of \$59.346 for each and every day until Mr. Beushausen is restored to service with full seniority rights unimpaired. This is a continuous claim to also include all pay increases, cost of living adjustments, holiday pay for any holiday missed, and any vacation time which would have been due and any other benefit due, etc. This is a continuous claim until this claim is brought to a settlement. (I.H.B. Docket **CLK-186**)

OPINION OF BOARD: Claimant entered service of carrier on July 27, 1977. On December 26, 1978 he received notice to attend an **investigation on January 5, 1979** for allegedly leaving his assignment, without permission, and for his failure to perform certain duties on **December 23, 1978**. On that day Claimant was to be working Position 6, Clerk, at Argo Yard, Illinois; tour of duty 2:30-10:30 P.M. On **January 18, 1979** Claimant was notified by Carrier that he had been found guilty as charged and was dismissed from service as of January 22, 1979.

Claimant's **own** admission and **testimony** from the investigation transcript indicate that Claimant vacated his **assignment** without **permission** on the night of December 23, 1978 at 10:00 P.M. and that certain of his duties were not performed on that night; this was because Claimant stated he felt ill and because of other **circumstances** related to the availability of materials to properly protect his assignment. Whatever the circumstances, however, the Claimant was still liable for completely protecting his assignment and/or of reporting his illness to a superior or to the Chief Dispatcher on the date in question. He did neither.

In view of the record before this Board the only question **to be** resolved is whether the penalty imposed by Carrier was appropriate. This Board notes that the function of discipline is not only to punish an **employee** but also to provide corrective and training measures for **employees**. This position has

been upheld by this Board on numerous occasions (Third Division No. 19537 inter alia). **In** this case, an **unwarranted** half-hour of not protecting one's assignment, and failure to perform certain duties on the date in question which **were** conceivably related, within the bounds of credibility, to both the **grievant's** physical health and other work-related **circumstances** do not merit, **in** the mind of the Board, discharge although **some** lesser discipline is **in** order. It is the **view** of the Board that the time out of service which Claimant has already **suffered** is sufficient discipline. The Claimant shall, therefore, be **reinstated** with all rights **unimpaired**, but without **back** pay.

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 discipline was excessive.

A W A R D

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of January 1983.

