

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Nuder 24292
Docket Number CL-24399

Paul c. Carter, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
{ Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim Of the System Committee of the Brotherhood (GL-9556)
that:

(1) Carrier violated the Agreement between the Parties when, on January 19, 1981, it imposed discipline of thirty (30) days suspension from service upon Extra employee J. M. Walker and it also imposed dismissal from service to Carrier upon Mr. Walker concurrent with the expiration of the thirty-day suspension period, effective February 18, 1981, as a result of two (2) investigations held at 8:00 AM and 9:00 AM on December 30, 1980, and

(2) As a result of such improprieties, Carrier shall now be required to reimburse Claimant J. M. Walker for lost wages, five (5) days per week, beginning January 19, 1981, and continuing, until he is restored to Carrier's service and that his service record be cleared of the notings incidents to the suspension and dismissal.

OPINION OF BOARD: Claimant was employed as an extra clerk. Beginning Monday, December 15, 1980, he was assigned to fill a 6:00 A.M. to 2:00 P.M. vacation vacancy at Carrier's Port Covington Terminal, Baltimore, Maryland.

The Carrier contends that on Tuesday, December 16, 1980, Claimant failed to report for duty until 7:15 A.M., or 1 hour and 15 minutes late, and that on Wednesday, December 17, 1980, he failed to report for work at all. On December 22, 1980, Claimant was formally charged with responsibility in connection with "your alleged failure to report for duty at the designated time and place, 6:00 A.M. on December 16, 1980, at Port Covington". Investigation of the charge was set for 8:00 A.M., December 30, 1980.

Also on December 22, 1980, Claimant was formally charged with responsibility in connection with "your alleged failure to report for duty at the designated time and place at 6 AM on December 17, 1980, at Port Covington", with investigation set for 9:00 A.M., December 30, 1980.

The Claimant did not report for the investigation scheduled for 8:00 A.M., December 30, 1980. He had, however, acknowledged receipt of notice scheduling the investigation for 8:00 A.M. The investigation was conducted in Claimant's absence, beginning at 8:25 A.M., following which Claimant was assessed discipline of thirty days actual suspension.

Claimant appeared for the second investigation, scheduled for 9:00 A.M., December 30, 1980. In that investigation it developed that **Claimant's** reason for not reporting for work at the assigned starting time was that he overslept. Following the second investigation, **Claimant** was dismissed from Carrier's service.

A copy of each of the investigations conducted on December 30, 1980, has been made a part of the record.

Based upon the record, the Board finds that none of **Claimant's** substantive procedural rights was violated. His failure to appear at the first investigation, scheduled for 8:00 A.M. December 30, 1980, was of his own volition. Substantial evidence was adduced that **Claimant's** tardiness on December 16, 1980, and his failure to report on December 17, 1980, resulted from his oversleeping. Oversleeping is not a valid excuse for tardiness or failure to report for duty. The record also shows that **Claimant** had previously been disciplined on three occasions for similar offenses during his short period of employment, having been hired in March, 1979.

The Organization's submission is that at one time an appeal was made on the property that **Claimant** be reinstated on a leniency basis. Any request for leniency addresses itself to the Carrier and not to this Board.

The Board does not find that Carrier's actions in imposing the discipline that was imposed to be arbitrary, capricious, or in bad faith. The claim will be denied.

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.

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By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

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