

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24296
Docket Number CL-24585

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight **Handlers**, Express and Station **Employees**
{ **Houston Belt and Terminal** Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-9621)
that :

1. Carrier violated the **Agreement** between the parties when it dismissed Mr. A.R. Williams **from** its **service** following investigation held July 17, **1981**.

2. Carrier's action was arbitrary, **unjust, unreasonable** and completely uncalled for as its decision of dismissal **was** not supported by the record.

3. Carrier shall now be required to compensate Mr. A. R. Williams for all wage loss **sustained**, beginning Friday, July 24, **1981**, and continuing each work day. five days' per week, **until** ret'd to service; **and** shall also be required to expunge the investigation record **from** his personal file.

OPINION OF BOARD: Claimant was regularly **assigned** to position of **Customer Service Center Clerk**, Houston, Texas. On July 14, **1981**, he was instructed to report at **9:00 A.M.**, July 17, **1981**, for **formal investigation**:

"... to develop the facts and place your responsibility, if any, in connection with a report that you were **quarrelsome, argumentative** and insubordinate to Chief Clerk H. J. Smith when he instructed you to order Car **RBOX 18721** from **Lastec** Plastic Company at approximately **11:55 A.M.**, July **14, 1981**, while working CSC Clerk Job No. 311."

The investigation was conducted as scheduled, following which **Claimant** was dismissed from Carrier's service on July 24, **1981**. A copy of the transcript **of** the investigation has been **made** e pert of the record.

In the handling of the dispute on the property, the **Carrier** offered reinstatement on a leniency basis on January **4, 1982**, which offer was rejected by the **Claimant**. On February 16, **1982**, Carrier offered reinstatement, with the **question** of pay for time out of service to be handled by the **Organization** as deemed necessary. This offer was accepted and Claimant was restored to service on February 25, **1982**. The issue before the Board is **pay** for **time** lost by Claimant **from** date of dismissal, July 24, **1981**, to February 25, **1982**.

We have carefully examined the transcript of the rather lengthy investigation conducted on July 17, **1981**. We find that the investigation was conducted in a fair and **impartial manner**. Claimant was present throughout the investigation, **was** represented, and he and his representatives were permitted to **question** or cross-examine witnesses presented by the Carrier.

In its submission to the Board the **Organization** contends that the letter of charge **against Claimant** was not "precise" under Rule 25(a) of the Agreement. We find that the charge was sufficiently precise to enable the Claimant and his representatives to prepare a defense, and met the requirements of the Agreement. Furthermore, it is well settled that if exceptions are to be taken to letter of **charge**, or the manner in which an investigation is conducted, such exceptions must be taken prior to or during the course of the investigation; otherwise, they are **deemed** waived. There is no requirement that specific rules allegedly violated be set forth in the letter of charge. **Houston Belt & Terminal Railway Company Clerk's Bulletin No. 7**, referred to in the Letter of dismissal, was included in and made a part of the investigation.

In the investigation it was shown that Chief Clerk **H. L. Smith** was Claimant's **immediate** supervisor. There was substantial evidence adduced at the investigation, not only from **Mr. Smith**, but several other clerks as well, in support of the **charge** against Claimant. Claimant did not **promptly comply** with the instructions of **Mr. Smith**, and was **argumentative** about doing so.

Based on the entire record before the Board, including Claimant's prior record, we find the discipline **imposed** by the Carrier, which amounted to about seven **months** suspension, not to be arbitrary, capricious or in bad faith. The claim for pay for **time** lost by **Claimant** 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.

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 April 1983.

