## NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24296 Docket Number CL-24585

Paul C. Carter, Referee

(Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes

PARTIES TO DISPUTE:

(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 **sutained**, 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*.

<u>OPINIONOF BOARD:</u> 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 **Claiment** 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.

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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 e defense, and met the requirements of the Agreement. Furthermore, it is wall settled that if exceptions are to be taken to letter of **charge**, or the manner in which en 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 thet 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 pert 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 andholds:

That the parties **waived** oral hearing;

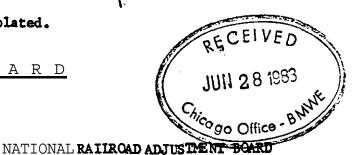
That the **Carrier** and the **Employes** involved in this dispute are respectively **Carrier** and **Employes** within the meaning of the Railway Labor Act, as approved June 21. 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.



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By Order of Third Division

Attest: Acting Executive Secretary National Railroad Adjustment Board Trad aner d. Βv Rosemarie Brasch - Administrative Assistant

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