NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24552

THIRD DIVISION

Docket Number a-24154

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, (Freight Handlers, Express and Station Employes (
(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Commiteee of the Brotherhood (GL-9460) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Barstow, California on May 1, 1980 when it wrongfully discharged Mr. R. G. Palmer, and

(b) Mr. R. G. Palmer shall now be restored to service and paid for all loss of wages and benefits commencing May 1, 1980.

OPINION OF BOARD: By notice dated April 23, 1980, the Carrier charged Claimant with violating General Rules 13 and 15. Specifically, Claimant, a Storehelper, was allegedly absent without proper authority between 7:00 a.m. and 8:00 a.m. on April 21, 1980.

At the investigation held on April 29, 1980, both the District Material Supervisor and the Material Supervisor testified that Claimant failed to report to work at his assigned starting time on April 21, 1980. The Material Supervisor related that he received a telephone call from Claimant at approximately 8:00 a.m. Claimant said that his electric clock was one hour behind the actual time due to a power failure. Claimant also indicated that he really did not want to work. Nonetheless, the Material Supervisor ordered Claimant to immediately report to his regular assignment. Claimant complied. At the investigation, Claimant read a letter he had obtained from the local utility company which verified that electric power had been out for about one hour in Claimant's neighborhood. Claimant testified that, as a result of the power loss, his electric alarm clock rang about one hour later than usual, Claimant did not realize that he was one hour late for work until 8:00 a.m.

In this case, there is no doubt that Claimant failed to timely report for his regular assignment on April 21, 1980. The Organization argues that Claimant's tardiness should be excused. Claimant emphatically blamed the utility company for his predicament. This Board, however, cannot accept Claimant's excuse. Claimant was solely responsible for reporting to work on time. He cannot successfully evade his responsibility by attempting to place the blame on the utility company. To insure that he punctually protected his assignment, Claimant should have taken whatever steps were necessary so that he would not oversleep. Thus, we conclude that Claimant committed the charged offense.

The final issue in this case is whether or not the penalty of discharge was commensurate with the proven offense. The Organization asserts that permanent dismissal is extremely harsh punishment for a single instance of tardiness. Relying on Claimant's poor prior personal record, the Carrier contends that dismissal is warranted since Claimant repeatedly and flagrantly committed similar offenses. After carefully evaluating all the circumstances, we must uphold the penalty. During his short tenure with the Carrier, Claimant had been cited and disciplined three times for being absent without proper authority. The prior warnings and suspension should have encouraged Claimant to timely and regularly report for his assignment. Instead, the record reveals that Claimant made no effort to improve his attendance record. While we may agree with the Organization's position that the April 21, 1980 incident, standing alone, did not justify dismissal, the Carrier properly considered Claimant's past record and his short length of service in determining the appropriate measure of discipline. Third Division Award No. 21834 (Marx).

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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1983