

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24656  
Docket Number CL-24822

**Tedford E. Schoonover**, Referee

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

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the **Brotherhood (GL-9675)** that:

1. Carrier violated the Agreement Rules, particularly Rule 21, when it dismissed Mr. Scott Martens from service effective July 17, 1981, and
2. Carrier shall now be required to reinstate Mr. Martens to service with all rights unimpaired and compensate him for all time lost and any other expenses he may have incurred as a result of his dismissal.

OPINION OF BOARD: Rule 21 cited in support of the claim assures an employe a **fair** and impartial hearing prior to discipline. We have examined carefully circumstances bearing upon this requirement. Claimant was admittedly 35 minutes late for his assignment as crew dispatcher on the morning of July 12, 1981. **On** the following date he was notified to appear at a formal investigation to determine responsibility. Investigation hearing was held on July 15 and dismissal notice issued on July 17. Claimant was represented at the hearing by the Local Chairman of the Brotherhood. Neither the Claimant nor his representative lodged any protest as to the notice of hearing nor the manner in which hearing was conducted.

The essential complaint of the Brotherhood is against alleged harshness of the Carrier action in dismissing the employe for a minor offense. While **we** might be inclined to agree with such a position if this were all that was considered in assessing the disciplinary action but there were other factors. In view of Claimant's overall record the dismissal takes on a different light.

**His** service record began on March 17, 1978. On June 29, 1979 he was dismissed for violation of Rule G and for sleeping while on duty. That disciplinary action was rescinded by a letter agreement of April 15, 1981. Claimant was restored to service on a leniency basis by the intervention of the Brotherhood. The letter agreement expressed the hope that the **disciplinary** suspension had served its purpose. Unfortunately such was not the case. **One** of the conditions for Claimant's return to service is quoted from the letter agreement as follows:

"claimant will be considered on probation for a period of one year with the understanding that if discipline is found to be justified after investigation, this may result in his immediate dismissal."

Claimant was returned to active service on May 12, 1981. His subsequent record included two disciplinary actions prior to the instant case. On May 18, 1981 he was given a letter of reprimand for failure to be available while assigned to the Clerks Extra Board. On July 2, 1981 he was given 45 days deferred suspension for the same charge plus missing a call.

In view of the circumstances reviewed we do not agree that the dismissal action was unwarranted. Carrier did not use Claimant's first offense following his conditional return to service as a basis for the extreme disciplinary action of dismissal. He was given two additional chances. One infraction resulted in a mere letter of reprimand and the other a deferred suspension. Then, within only ten days, he reported 35 minutes late for work, the Carrier effectuated the dismissal option.

We do not find Carrier action arbitrary or capricious. The Claimant was provided a fair and impartial hearing as required by Rule 21 and his dismissal was just and reasonable. His actions amply demonstrated his unreliability and the Carrier gave him full opportunity to improve his ways before dismissing him from the service.

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;

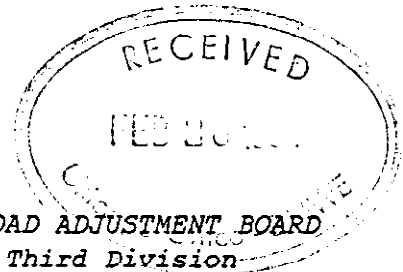
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

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  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1984