NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25225

THIRD DIVISION

Docket Number CL-25411

James Robert Cox, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9829) that:

(a) Carrier violated the current Agreement when it imposed harsh and severe penalty on J. D. Curtis, Jr., for alleged violation of 1, 2, 14, 16, and 26 of General Rules for the Guidance of Employes, 1978, and

(b) Facts developed at the formal investigation held on February 17, 1982, failed to sustain Carrier's alleged charges and did not justify or warrant the harsh penalty imposed, and

(c) J. D. Curtis, Jr. shall now be reinstated to service of the Carrier with all rights unimpaired and paid for all monetary loss sustained as a result of being discharged on February 17, 1982, until reinstated, and

(d) J. D. Curtis, Jr. shall be paid an additional twelve per cent per annum until claim is paid.

OPINION OF BOARD: J. D. Curtis, Jr., discharged February 17, 1982,for alleged violation of General Rules 1, 2, 14, 16, and 26 had been an employe of the Carrier since June, 1968 and, at the time of his termination, was a TOFC Clerk at Dallas, Texas.

Claimant phoned Agent Turnbull before his shift commenced on Thursday, January 28, 1982,and told him that he would be off that day as well as Friday and would not be back at work until Monday. That afternoon he called Assistant Agent Davis, his immediate Supervisor, and told him that he would be returning to work Monday morning. Although Davis had never before so required, he requested Claimant to bring in a certificate from a reputable physician stating the nature of his illness. Claimant asked whether he was being ordered to see a Doctor and Davis read him Rule 46/C/ which relates to sick leave:

> "The employing officer must be satisfied that the sickness is bona fide. Satisfactory evidence as to sickness, in the form of a written certificate stating the nature of an employee's illness from a reputable physician, may be required in case of doubt."

The Supervisor indicated that he had doubts about Claimant's illness since his absence that Thursday and Friday would constitute three days of absence in the ten days since he had come on the job. Claimant stated that he was in doubt as to what type of certificate Davis was requesting and, when he returned to work Monday, February lst, he arrived with, not a physician's certificate. but with a statement of disability he had executed.

Claimant stated that he had been off Thursday and Friday because of a sore throat and cold.

That Monday, Davis, at the beginning of the shift, asked Claimant for the Doctor's statement. He indicated that he did not have one from a physician. Davis then asked him about paperwork relating to a NYKV trailer. According to Davis, when he asked Claimant to explain in writing his handling of the trailer, Curtis told him he was going to get a witness or his Union representative. Davis responded that he was not to get either one but Curtis left the office. Davis then prepared two notices requesting responses by 12:00 noon.

The first asked Claimant to advise in writing why he failed to furnish the certificate stating the nature of his illness. The second written instruction asked for an explanation of his handling of the NYKV trailer.

Claimant responded in writing to the first inquiry at approximately 12:55 p.m. - following his lunch period - and submitted a reply to the second request toward the end of the shift, at approximately 3:45 p.m. He had received these requests at 9:00 a.m. Curtis did not indicate to either Supervisor, Davis or Turnbull, that he would be unable to meet the 12:00 noon deadline. Curtis had told Davis he could not answer his question about the container without his records. It developed that he had handled the trailer paperwork properly. One of the files associated with the trailer was left open, but it appears that it was not Claimant's fault. The open file gave the impression that the trailer had been mishandled.

The evidence indicates that Curtis performed his normal work that day. He said it took him an hour and a half just to respond to the two inquiries.

Following the Hearing, a Superintendent notified Curtis in February, 1982 that he was terminated from Service for failing to comply with Davis' instructions to furnish a proof of illness certificate from a physician when he returned from duty on February lst, and for insubordination for not complying with the two written instructions of Turnbull before the noon deadline.

Claimant's discipline record was not good. From April, 1969,through February, 1982, he had been given 195 demerits over 16 occasions. He had been suspended for 60 days without pay in 1977 for absenting himself from duty for one and one-half hours during a work day without proper authority. In February, 1982, however, his record was clear.

The Board, after carefully reviewing the evidence, finds that although Charges were supported by the evidence considering the circumstances, discipline was excessive. Although Claimant had failed to respond to the written instructions by the noon deadline, he did have a busy morning with his normal assignment, was not excused nor relieved from his work to give him time to respond to the instructions, his response was comprehensive when submitted, and there was no showing it could have been made sooner without disrupting his regular assignment. We note that he was permitted to work that Monday despite the fact that he did not bring in the requested Doctor's statement.

Claimant's conduct, however, was culpable for, despite the knowledge of the deadline, he did not request an extension or any relief from his regular duties and had made no effort to bring in the requested statement. Claimant is to be reinstated without back pay, but with full restoration of seniority.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.