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NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25419
Docket Number CL-25509

Paul C. Carter. Referee

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

PARTIES TO DISPUTE: {

(Chicago and Western Indiana Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9877**) that:

1. Carrier violated the effective Telegraphers' Agreement when, following **an** investigation held **on** June 14, 1983, it dismissed **Mr. Timothy J. Murphy, III** from service;

2. Carrier shall now restore **Mr. Murphy** to service with **his** seniority **and** all other rights unimpaired, shall compensate him for all time lost as a result of this discharge, and shall clear his record of the charges placed against him.

OPINION OF BOARD: Claimant was, prior to the occurrence giving rise to the dispute herein, employed by the Carrier as a **leverman-telephone** operator at a location designated as Carrier's State Line Tower, with assigned hours **11:00** P.M. to 7:00 A.M. He had been in Carrier's service since February 12, 1976. On June 2, 1983, he was notified to report for investigation:

"Please arrange to present yourself at a formal investigation in the **51st** Street Office of the Chicago and Western Indiana Railroad Company at 428 W. 47th Street, Chicago, Illinois 60609 at 9:00 A.M., Monday, June 6, 1983.

At this investigation you will be charged with violation of Chicago and Western Indiana General Rules A, D, E, O, U, also Rules No. 220, 253, 609 as shown in the Chicago **and** Western Indiana Railroad Company Book of Rules effective October 30, 1966. These violations occurred while you were on duty as leverman-Telephone Operator at State Line Tower, **11:00** P.M. to 7:00 A.M. assignment on **May 28** and May 29, 1983. In addition to above charges, you also are charged with violation of instructions dated November 27, 1981 issued by **Mr. R. L. Henry**.

You may bring with you to this investigation any witnesses and/or representatives you may so desire:

You are being held out of service pending this investigation:

The rules and instructions cited in the letter of charge are set out in the Carrier's Submission, and will not be repeated here.

The investigation "as postponed and conducted on June 14, 1983. Following the investigation, Claimant "as notified on June 20, 1983, of his dismissal from service.

In the handling of the dispute on the property and in submission to the Board, the Organization has raised a number of procedural objections. We have considered all of the procedural objections raised by the Organization. Most of them are without merit; however, we consider none of them or all of them of sufficient significance to invalidate the proceedings. There is no showing that Claimant's rights were prejudiced.

In the investigation there "as substantial evidence, including Claimant's statement, that Claimant "as asleep while on duty the night of May 28, 1983, and that he did not properly handle and report trains at his location. The offenses were serious. Sleeping on duty is usually considered a dismissible offense. Also, Claimant's prior disciplinary record "as far from satisfactory. He "as dismissed from service on one prior occasion and reinstated on a leniency basis some six months later. Also, he "as disciplined on two prior occasions for sleeping while on duty. Claimant's prior record "as referred to in the handling of the dispute on the property end is properly before the Board. It is so well settled as to require no citation that an employe's past record may be considered in arriving at the discipline to be imposed for a proven offense.

Considering the serious violations of the Claimant in the present case, and his past unsatisfactory record, we find the Carrier's action not to be arbitrary, capricious or in bad faith. The claim 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 "es 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 30th day of April 1985.