

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25896
Docket Number CL-25901

David P. Twomey, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood
(GL-9928) that:

1. Carrier violated the Agreement between the parties when it arbitrarily and injudiciously dismissed Clerk J. D. Hebert from its service beginning May 14, 1982.

2. Carrier's action in dismissing Clerk Hebert from service was unjust, arbitrary and an abuse of discretion.

3. Carrier shall now be required to expunge the record of investigation from Clerk Hebert's personal record file and compensate him for all wage and other losses sustained account Carrier's action."

OPINION OF BOARD:

The Claimant was notified by letter dated April 19, 1982 to report to attend a formal investigation concerning the following charge:

"*** to develop the facts and place responsibility if any, in connection with a report that you failed to protect vacancy on the 11:00 PM Yard Clerk position, job #024, at Alexandria Yard April 17, 1982, after accepting call for same."

The investigation was postponed at the request of the Organization, and thereafter held on May 11, 1982. By letter dated May 14, 1982, Claimant was advised that he was dismissed from service in connection with his failure to protect the vacancy on the 11:00 P.M. Yard Clerk position, Job No. 024, at Alexandria Yard on April 17, 1982, after accepting a call for the position.

The record shows that Claimant was working off the Alexandria Clerk Extra Board. He was called to fill a vacancy on 3:00 P.M. Chief Clerk position at Alexandria, Louisiana, on Saturday, April 17, 1982. He accepted that call; however, he called in a short time later stating his wife was out of town, that he did not have a babysitter and asked if he could swap with Jim Zangla. Mr. Ivey, the Manager of Customer Service Operations, approved the swap at approximately 2:00 P.M. Claimant knew there was a vacancy on the 11:00 P.M. Yard Clerk job on Saturday, April 17, 1982. He knew he stood to fill this position if the regular employee on the job did not mark up before calling time. Mr. Zangla worked the 3:00 P.M. Chief Clerk position. He talked to Claimant just prior to 8:00 P.M., and Claimant inquired whether or not the regular employee on the 11:00 P.M. Yard Clerk position had marked up yet. When Claimant was advised that the regular employee had not marked up, Claimant requested that Mr. Zangla call him at 10:15 P.M. Mr. Zangla began calling Claimant at 10:20 P.M., leaving the phone ring some 20 times but

received no response. Thereafter, Chief Clerk Fontenot called Claimant every 30 minutes from 11:00 P.M. to 3:00 A.M., and also called Claimant's mother, sometime between 1:30 A.M. and 2:00 A.M. Claimant also testified that his mother said that she had tried to call him that evening. Claimant's position was that he and his family slept through all of the above telephone calls, because it was a hot night and he was sleeping under a box fan.

We find that the Carrier made special arrangements to accommodate Claimant on Saturday, April 17, 1982, after he had accepted a call for the 3:00 P.M. Chief Clerk job. Clearly Claimant was lined up to work the 11:00 P.M. Yard Clerk position. As of 8:00 P.M. he was well aware that the regular employee had not marked up for the position. In view of the special arrangement made on his behalf as approved by Mr. Ivey, and in view of the information given him at 8:00 P.M. by Mr. Zangla, all of which occurred after he had accepted the 3:00 P.M. Chief Clerk position, his responsibility to report for work at 11:00 P.M. was clear, subject to Mr. Zangla fulfilling his promise to call him at 10:15 P.M. Two Carrier employees and his mother called his home over a period of some five hours and received no answer. We find that Claimant was responsible for failing to protect the 11:00 P.M. Yard Clerk position, as charged. He was properly subject to discipline. However, we find that the discipline of permanent dismissal is not warranted. Any discipline beyond a 6 month suspension in this case is excessive.

On November 4, 1984, Claimant was offered a leniency reinstatement with the stipulation in part that he sign a waiver of his right to progress a claim for backpay. Claimant, as was his right, rejected this offer as he had previous offers. Claimant was then given a letter granting him full reinstatement rights, not subject to any restriction on his right to progress a claim concerning the matter. The letter stated:

"Alexandria, La.
November 4, 1982

J. D. Hebert, Clerk
Alexandria, La.

This is to advise that you have been reinstated to the service of Missouri Pacific Railroad Co. as clerk, effective this date, with seniority and vacation rights unimpaired. You are to mark up no later than November 19, 1982.

/s/P. N. Crabtree
Superintendent

cc: W. B. Needham"

Claimant has refused to mark up until paid for all time lost.

Claimant shall be returned to service with all rights unimpaired, but without backpay. After November 5, 1982, Claimant has been off duty at his own peril. The period from May 14, 1982, when he was dismissed to November 4, 1982, when he was unconditionally returned to service may properly be considered a discipline suspension.

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 discipline was excessive.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.