

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25911
Docket Number CL-25962

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Fruit Growers Express Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9942) that:

1. The Fruit Growers Express Company arbitrarily and in an unjust manner violated Rule 50, among others, of the agreement, when it terminated Mr. R. L. Elliott, Jr. on November 26, 1982.

2. The Company shall now be required to reinstate Mr. Elliott and restore all of his rights and privileges unimpaired, including pay for lost time."

OPINION OF BOARD: Claimant was formerly employed as a stockman at Carrier's facility at Alexandria, Virginia.

The record shows that on October 19, 1982, instructions were issued to the Claimant and other employees that their presence was required on Saturday and Sunday, October 30 and 31, 1982, for the taking of physical inventory. A second memorandum was circulated on October 22, 1982, which detailed the inventory count teams and reiterated the requirement that "all participants are expected to be present from 7:00 A.M. - 5:00 P.M. on these two days to perform counts."

Claimant worked on Saturday, October 30, 1982, but did not work on Sunday, October 31, 1982. On November 3, 1982, Claimant was notified by Carrier's Director Materials and Stores Operations:

"Please consider this letter formal notification that I am charging you with insubordination as a direct result of your failure to comply with the instruction to you to be present for the annual inventories at Alexandria, taken on Saturday, October 30th, and Sunday, October 31st 7:00 AM - 5:00 PM.

"Specifically, that you were not present as required on Sunday, October 31st. Also, that you were notified both in writing by memo of October 19, 1982 and verbally by Manager of Stores, A. R. Whiting, on October 30th that your presence would be required on Sunday, 31 October, 1982.

"In accordance with the working agreement, the hearing date is set for Friday, November 12, 1982 at 10:00 AM in my office. You may have such representation at that hearing as allowed by the agreement."

By agreement, the hearing was postponed and conducted on November 15, 1982, following which Claimant was notified of his dismissal from service on November 24, 1982, the dismissal to be effective at the close of business on Friday, November 26, 1982.

A transcript of the hearing conducted on November 15, 1982, has been made a part of the record. From our review we find that the hearing was conducted in a fair and impartial manner, and none of Claimant's substantive procedural rights was violated.

In the investigation, or hearing, on November 15, 1982, substantial evidence was adduced in support of the charge of November 3, 1982, against the Claimant. The record shows that Claimant did work on Saturday, October 30, 1982, but did not work on Sunday, October 31, 1982. On October 30, 1982, he simply informed his Supervisor that he would not be present on October 31, 1982. He did not receive permission to be absent on October 31, 1982. An employee's right to be absent from his assignment is not absolute, without the permission of supervisory personnel. In Award No. 6710 of the Second Division, National Railroad Adjustment Board, it was held:

"...No employee may report when he likes or choose when to work. No railroad can be efficiently operated for long if voluntary absences are condoned."

See also Award No. 14601 of the Third Division.

The Claimant has contended that his absence on October 31, 1982, was because of his religious conviction. This Board generally has not required Carriers to accommodate an employee's religious conviction. See Award No. 8226, Second Division, which quotes at length from a decision of the United States Supreme Court in *Trans World Airlines, Inc. vs. Hardison*, 432 U.S. 63 (1977). See also Second Division Awards Nos. 8660, 10121, 10291, 10401.

Based upon the entire record in the present dispute, the Board concludes that severe discipline against Claimant was warranted; however, permanent dismissal was excessive. The time that Claimant has been out of service should constitute sufficient discipline. We will award that Claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of 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 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

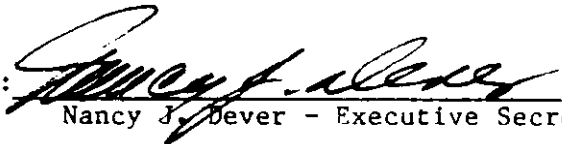
That the discipline imposed was excessive.

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 26th day of February 1986.