

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26132
Docket Number CL-26105

Eckehard Muessig, Referee

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9968) that:

Claim No. 1

(a) Carrier violated the current Clerks' Agreement when as a result of investigation held on September 17, 1982, it assessed the record of M. T. Flagg with fifteen (15) demerits, and

(b) M. T. Flagg shall now have the fifteen (15) demerits removed from his personal record and personal record cleared of all charges as stated in formal investigation."

Claim No. 2

(a) Carrier violated the current Clerks' Agreement when as a result of investigation held on February 25, 1983, it assessed the record of M. T. Flagg with twenty (20) demerits, and

(b) M. T. Flagg shall now have the twenty (20) demerits removed from his personal record and personal record cleared of all charges as stated in formal investigation.

Claim No. 3

(a) Carrier violated the current Clerks' Agreement when it removed M. T. Flagg from its service as a result of investigation held on March 23, 1983, and

(b) M. T. Flagg shall now be reinstated to Carrier service with all rights unimpaired and compensated for all monetary loss suffered on his clerical position at Chicago as a result of being removed from service, and

(c) In addition to the moneys claimed, M. T. Flagg shall now receive fifteen per cent (15%) interest on moneys claimed, such interest to be compounded on each and every pay period from date of removal from service forward for the period of time Claimant is held out of service (40 hours per week)."

OPINION OF BOARD: In this matter, the Claimant had been dismissed from the Carrier's service after he had accumulated over 100 demerits for tardiness and/or failure to report to work. Pursuant to Rule 31 of the General Rules for the Guidance of Employees, which incorporates the Brown System of Discipline of Record, an accumulation of sixty (60) demerits subjects that person to dismissal.

While the Organization has advanced a number of arguments and contentions on behalf of the Claimant, our review of the record leads us to conclude that the Carrier, based on competent evidence, rightfully arrived at its finding that the Claimant was guilty as charged. Having so found, the only remaining issue is whether, under the facts of record and under principles long applied by the Division in discipline cases, a lesser penalty would be more commensurate for the infraction.

The Board notes that unauthorized absence from duty is a serious offense and may rightfully result in dismissal from the service. In the instant case, the Carrier's demerit system clearly provides that when a certain numerical point is reached, as it was in the case of the Claimant, the Carrier may legitimately sever the employment relationship. It is also a well-established precedent in this industry that the Board may not retry the issues or disturb the Carrier's decision when it is soundly based. However, the Board, without prejudice to the future application of Rule 31, does note on the weight of the total record and the particular circumstances set forth therein, that there are certain elements in this case which serve to mitigate the penalty.

First, all the evidence shows and it has been acknowledged by the Carrier that the Claimant's on-the-job performance was fully satisfactory, as a matter of fact. Second, there are no other disciplinary assessments against the Claimant's record except those related to his attendance. Third, while the Board does not minimize the Carrier's need for employee reliability and responsibility, some of the Claimant's tardiness consisted of a few minutes of lateness. Fourth, the Carrier had earlier offered to reinstate the Claimant without backpay. The Claimant refused on the basis that he wanted some backpay. The Carrier's offer, also under well established principles of the Board, may not be taken as prejudicial to its decision to terminate the Claimant. We do not differ from this principle. However, this offer does indicate that the Carrier (which is in the best position to judge the employability of the Claimant) was willing to provide the Claimant another opportunity to become a useful employee. Finally, the Claimant has seniority of some nine and one-half years and the incidents on which the charges are based occurred mainly in the last quarter of this time span; and a number of them were fairly closely bunched together. In this last respect, there are indications that the Claimant and his family were experiencing personal problems, some related to health, that had adverse impact on his attendance.

In summary, there are many factors beside the sheer number of demerits that may rightfully (as recognized by the Carrier) be factored into the

final assessment of the penalty of discipline. On the weight of the total record and given the unique facts and circumstances brought forth in this record, we hold that the Claimant's time out of service is sufficient penalty. He is to be restored to service with seniority and all other rights unimpaired, but without pay for time lost and with the understanding that this will provide him one last opportunity to become a reliable and responsible employee. Our holding is for this Claim only and shall not be understood as to impair the Carrier's application of the demerit system contained in its Rules in future cases.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

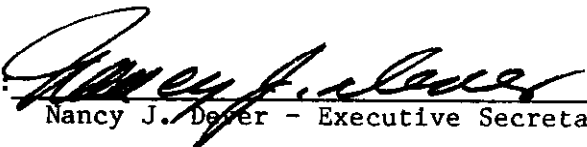
That the discipline was excessive.

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 19th day of September 1986.