NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26586

THIRD DIVISION Docket Number CL-26817

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, and Freight Handlers, Express and Station Employes

(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10046) that:

CLAIM NO. I

(a) Carrier violated the provisions of the current Clerks' Agreement at Gallup, New Mexico, on or about January 4, 1984, when it wrongfully assessed the personal record of Mr. J. H. Cleveland with twenty (20) demerits, and

(b) Carrier shall now remove the twenty (20) demerits and any reference to the formal investigation held on December 16, 1983, from the personal record of J. H. Cleveland.

CLAIM NO. 2

(a) Carrier violated the provisions of the current Clerks' Agreement at Gallup, New Mexico, on or about May 2, 1984, when it wrongfully assessed the personal record of Mr. J. H. Cleveland with ten (10) demerits, and

(b) Carrier shall now remove the ten (10) demerits and any reference to the formal investigation held on April 17, 1984, from the personal record of J. H. Cleveland.

CLAIM NO. 3

(a) Carrier violated the provisions of the current Clerks' Agreement at Gallup, New Mexico, on or about May 2, 1984, when it wrongfully assessed the personal record of Mr. J. H. Cleveland with fifteen (15) demerits, and

(b) Carrier shall now remove the fifteen (15) demerits and any reference to the formal investigation held on April 17, 1984, from the personal record of J. H. Cleveland.

CLAIM NO. 4

(a) Carrier violated the provisions of the current Clerks' Agreement at Gallup, New Mexico, on or about July 27, 1984, when it wrongfully assessed the personal record of Mr. J. H. Cleveland with twenty (20) demerits, and

(b) Carrier shall now remove the twenty (20) demerits and any reference to the formal investigation held on July 12, 1984, from the personal record of Mr. J. H. Cleveland.

CLAIM NO. 5

(a) Carrier violated the provisions of the current Clerks' Agreement at Winslow, Arizona, on or about July 26, 1984, when it wrongfully assessed the personal record of Mr. J. H. Cleveland with thirty (30) demerits, and

(b) Carrier shall now remove the thirty (30) demerits and any reference to the formal investigation held on July 12, 1984, from the personal record of Mr. J. H. Cleveland.

CLAIM NO. 6

(a) Carrier violated the provisions of the current Clerks' Agreement at Winslow, Arizona, when it removed Mr. J. H. Cleveland from service as a result of a formal investigation held on August 10, 1984, and

(b) Mr. J. H. Cleveland shall now be returned to Carrier service and paid for all loss of wages and benefits commencing on or about August 29, 1984."

OPINION OF BOARD: Claimant's service with Carrier began in March, 1966. This dispute is a series of 6 Claims in that Claimant's dismissal on August 29, 1984, was a result of his having accumulated 95 demerits. Those Claims can be summarized as follows:

CLAIM #1

On December 9, 1983, Claimant was notified to attend an investigation:

> "Concerning you alleged failure to make proper fill wheel report for twelve (12) cars LP Gas picked up at Zuni by train 579-BH-1, November 30, 1983 . . . ."

At the Hearing, Claimant admitted he had not properly wheeled two of the twelve cars but felt in mitigation that the error was caused by the constant distraction of other duties which he described.

On January 4, 1984, Claimant was notified he had been assessed 20 demerits.

CLAIMS II AND III

On March 22, 1984 Claimant was charged with:

> "alleged mishandling of the crew board at Gallup, New Mexico in calling of Trains 881-H-1, 901 G-8 and 853-G-1."

On the same date he was charged with:

> "alleged . . . mishandling . . . in calling relief crew for Gallup Local Train 3112-1-l on duty 11:50 P.M. March 9, 1984."

Investigations of both charges were conducted, separately, on April 17, 1984.

In connection with the first charge; Claimant argued he had relied on information contained on a Clip Board hanging in the Crew Office and contends that had been the practice. In doing so he overlooked a letter of instructions issued on September 23, 1983. Claimant noted this was the first time the Extra Board had been depleted on his tour since 1982. Although the mistake may have subjected Carrier to a monetary Claim, none was filed.

Regarding the second charge of March 22, 1984, Claimant's position was :

> . . . I received short notice of Dog Catch Crew . . . All men on this . . . crew received less than a 50 min. call. I made attempt to telephone the Chief Dispatcher . . . his line was busy and to prevent further delay . . . I used the first out Fully Rested Little Pool Engineer . . . . I had no information as to how much more work the Gallup Local had to do."

It turned out the crew worked only three hours and forty minutes and accordingly Engineer Jensen would have been available. As a result Carrier was subject to penalty Claims, but none was made.

Claimant argued that in such situations the chief Dispatcher makes the decision as to whether a fully rested Engineer should be called and that he repeatedly tried, without success, to reach that official before calling the Engineer.

Claimant was assessed 10 and 15 demerits respectively for these incidents.

CLAIM IV

On May 23, 1984, Claimant was charged with mishandling the Crew Board. From the investigation it appeared that Claimant, misinterpreting the Agreement, had permitted two employees to vacate an assignment and move directly to the Extra Board without waiting until bids had closed. Claimant was assessed 20 demerits.

CLAIM V

On June 29, 1984, Claimant was charged with failure to protect his assignment on June 26, 1984. At that time he was as a Station Wagon Driver. His tour began at 11:45 P.M.

According to Claimant he was returning to town in his van on June 26, 1984, when he became very tired. He pulled into a rest area at 5:00 P.M., set his alarm for 9:30 P.M. and went to sleep. When he awoke it was 2:30 A.M. He drove to the nearest phone and called in. He was advised his tour was being worked and that he should see the Agent in the morning. According to Claimant this was the first time he had ever been tardy during his tenure on the Division.

Claimant was subsequently assessed 30 demerits.

CLAIM VI

On July 30, 1984, Claimant was charged with accumulated excessive demerits. At an investigation on August 10, 1984, Claimant, who was now a Relief Clerk at Winslow, admitted he had received a total of 95 demerits. He testified:

> "I found that the Crew Clerk's job in Gallup was a little beyond me and that is why I have bid in a position in Winslow that I am well qualified for. I think the people that I have been working with in Winslow since I arrived here will attest to this fact."

Carrier utilizes the Brown System of Discipline under which a balance of sixty demerits can lead to discharge and on August 29, 1984, Claimant was notified of his removal from service.

In handling these Claims on the property the Organization has taken the position in most instances that the charges against Claimant were too vague and that Claimant has been singled out for discipline. We have carefully examined the record in all these Claims and we find no support for these assertions. Claimant responded in detail to all charges and did not appear confused or unaware of their nature nor was there any evidence of disparate treatment.

The record further reveals that in August and September, 1985, the Claimant was offered reinstatement on a leniency basis without pay for time lost but with 45 demerits to remain outstanding. The Claimant refused the offer.

We do note Claimant is a long term employee who accumulated numerous demerits in a relatively short time while he was working an assignment which, he admits, was a "little beyond" his abilities. We also note Claimant, who received 30 demerits for failing to protect his assignment on one occasion apparently had never been absent or tardy before. Thus the Board feels there are mitigating factors and based upon them we find the demerits assessed were excessive. We will reduce them as follows:

Claim	Assessed	Reduced To
1	20	10
2	10	5
3	15	5
4	20	10
5	30	15

Thus reduced, Claimant's record stands at 45 demerits. Accordingly, we shall require that he be returned to service with full seniority and all other rights unimpaired but with no backpay for time 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 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 27th day of October 1987.