

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10121) that:

CLAIM NO. 1:

(a) Carrier violated the current Clerks' Agreement at Fort Worth, Texas, when on July 5, 1985, it dismissed J. D. Curtis, Jr. from service, and

(b) Facts developed at the formal investigation held on July 5, 1985, failed to sustain Carrier's alleged charges and did not justify or warrant the harsh penalty imposed, and

(c) J. D. Curtis, Jr. shall now be reinstated to service of the Carrier with all rights unimpaired and paid for all monetary loss sustained as a result of being discharged on July 5, 1985, until reinstated, his personal record cleared of all charges, and

(d) J. D. Curtis, Jr. shall be paid an additional twelve per cent per annum until claim is paid.

CLAIM NO. 2:

(a) Carrier violated the current Clerks' Agreement at Fort Worth, Texas, when on July 15, 1985, it dismissed J. D. Curtis, Jr., from service, and

(b) Facts developed at the formal investigation held on July 15, 1985, failed to sustain Carrier's alleged charges and did not justify or warrant the harsh penalty imposed, and

(c) J. D. Curtis, Jr. shall now be reinstated to service of the Carrier with all rights unimpaired and paid for all monetary loss sustained as a result of being discharged on July 15, 1985, until reinstated, his personal record cleared of all charges, and

(d) J. D. Curtis, Jr. shall be paid an additional twelve per cent per annum until claim is paid."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Between June 14 and June 27, 1985, a period of thirteen days, the Claimant marked off sick. Carrier alleged that he was working at a local radio station at that time and failed to request a formal leave of absence, as is required by Company rules after ten days. An investigation was held in absentia on July 5, 1985, following which Claimant was found guilty of violating Rules 13, 16, and 21(d) of the General Rules for the Guidance of Employees, 1978, and was discharged from service.

Claimant was also cited for walking off the property on July 1, 1985, after being handed a notice of investigation by the Carrier for the July 5, 1985, hearing. A second hearing was held in absentia on July 15, 1985, in conjunction with his alleged failure to protect his assignment after leaving the property without authority. Claimant was found guilty of violating Rules 14, 15, and 16, and notified that he was removed from service. Claims were progressed by the Organization for both dismissals and were combined for submission to the Board.

The Board has reviewed the entire record of these cases and has some question about Carrier's failure to grant a requested postponement for the first investigation conducted on July 5, 1985. We note, however, that no such request was made by the Claimant for the July 15, 1985, hearing and thus conclude that investigation, held in absentia, was conducted without procedural flaw. In regard to the charges that were the subject of that hearing, the record is very clear that Claimant was unequivocally told that his leaving the property without authorization would result in a charge of insubordination. His failure to heed that warning was at his own peril.

Claimant's past record is not a good one, consisting of 205 demerits, many of which were for laying off without proper authority. In light of his most recent infraction, it must be concluded that the discipline imposed was commensurate with the gravity of the incident.

Form 1
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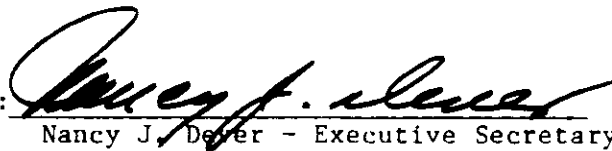
Award No. 27086
Docket No. CL-27380
88-3-86-3-616

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 17th day of May 1988.