

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10241) that:

1. Carrier violated the TCU (formerly BRAC) Agreement, expressly Rules 24, 16, 28, 29 and 30 contained therein when it issued discipline of actual dismissal to Mr. L. Wicks on the date of March 6, 1987, following investigation held on the date of March 4, 1987.

2. Carrier's action was harsh, unwarranted, bordering on an abuse of discretion due to the facts and circumstances of this case.

3. Carrier shall now be required to reinstate Mr. Wicks to service with pay for all time lost, seniority, vacation and all other rights unimpaired including but not limited to; dental, medical and hospitalization benefits effective March 6, 1987, and continuing five (5) days per week until corrected."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

Claimant was employed as a yard clerk by Carrier. On February 25, 1987, Claimant was notified to attend a formal investigation of the charge:

"to develop the fact, discover the cause and determine your responsibility, if any, in connection with your alleged violation of General Rule 'P' on February 24, 1987, in that you were marked off sick with this Carrier while holding other employment."

The hearing took place on March 4, 1987, and as a result, Claimant was dismissed from the Carrier's service. The Organization thereafter filed a Claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the entire record in this case, and we find that there is insufficient evidence to support the procedural argument raised by the Organization. Claimant was properly represented although not by the Representative of his choice. We find no contractual infirmity in such action and such does not, in this case, render Carrier's action a denial of Claimant's contractual rights.

With respect to the substantive issue, this Board finds that there is sufficient evidence in the record to support the guilty finding. This Board also finds that the wrongdoing of the Claimant justified his dismissal. Therefore, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 10th day of August 1989.