Award No. 5516
Docket No. CLX-5424

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

RAILWAY EXPRESS AGENCY, INCORPORATED

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that:

(a) The agreement governing hours of service and working conditions between the Railway Express Agency and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes effective September 1, 1949, was violated at the Boston, Massachusetts Agency in the treatment accorded employe Edward R. O'Connell as a result of an alleged investigation conducted October 14, 1949; and

(b) The record shall be cleared of the charge made against him August 16, 1949 and he shall be returned to service with seniority rights unimpaired and compensated for wage loss sustained on October 19, 1949 and subsequent thereto until restored to the service.

OPINION OF BOARD: The claimant was dismissed from service after investigation upon charges of violation of Rule 825, requiring him to settle in full for collections at the close of each day's business, and abandoning a Company vehicle. The Organization contends that he should be exonerated because he suffered an attack of amnesia. Amnesia, like other physical or mental infirmities which cause or contribute to some improper action, does not exonerate one from responsibility for such action. At most it may be considered as a mitigating circumstance in assessing the penalty for such action. In fact one subject to attacks of amnesia may thereby be undesirable as an employe, particularly in a position of responsibility.

Prior to his dismissal claimant held the position of driver. The doctor's certificate relative to his attack of amnesia stated, "I believe he should return to work as a helper or assistant." The submission of the Organization stated in part, "The employes agree that management had the right to protect their interest and they could have done so by demoting this employe to a helper until such time as he had fully recovered." The management however did not do so and there is no evidence that a helper's position, as such, exists. Under all of the facts and circumstances of record we think the claim must be denied.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1951.