

Award No. 12321
Docket No. CL-14250

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5425), that:

1. The Carrier violated the Clerks' Agreement when on December 24, 1962, it summarily dismissed D. W. Bales, Deck Foreman, Lamberts Point Coal Piers, Norfolk, Virginia, from service.
2. Deck Foreman D. W. Bales shall now be reinstated to the service of the Carrier with seniority and all other rights unimpaired.
3. Deck Foreman D. W. Bales shall now be compensated for all wage and other losses sustained account this summary dismissal.
4. Deck Foreman D. W. Bales' record shall be cleared of all alleged charges or allegations which may have been recorded thereon as the result of the alleged violation named therein.

OPINION OF BOARD: Claimant had been employed by the Carrier since December 1, 1952. On December 2, 1962, he held a regular assignment as Deck Foreman, and was scheduled to report for duty on that assignment at 11:00 P. M. He failed to report at the assigned starting time, following which he was cited for formal investigation, and investigation was conducted in accordance with the provisions of the Agreement.

At the investigation it was established that the Claimant had failed to report at the starting time of his assignment on December 2, 1962; in fact, the Claimant and his representative acknowledged his guilt of the charge against him, the Claimant stating that the reason for not reporting on time was due to his having fallen asleep in his automobile at a stopping point en route to work.

The Board finds no proper basis for the contention that the charge against Claimant was not sustained. However, in the light of the evidence of the record, the discipline assessed against the Claimant is too severe. In our considered judgment, the offense with which the Claimant was charged was not so

serious and substantial as to justify the imposition of the extreme penalty of dismissal from service. Our decision takes into account that the Claimant's past record, although containing previous instances of lateness, showed no such offense since his last infraction and warning in this regard — a period of almost five years.

Based upon the entire record, the Board concludes that Claimant should be restored to service with seniority and other rights unimpaired, but without pay for time lost.

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 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 Carrier has violated the Agreement to the extent set forth in the Opinion.

AWARD

Claim sustained to extent shown in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March 1964.