

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**
THE WASHINGTON TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5485) that:

1. The Carrier violated the Clerks' Agreement when on July 9, 1963, it summarily dismissed Haskell E. Sharpe, Baggage and Mail Handler, Washington, D. C., from service.
2. Baggage and Mail Handler Haskell E. Sharpe shall now be reinstated to the service of the Carrier with seniority and all other rights unimpaired.
3. Baggage and Mail Handler Haskell E. Sharpe shall now be compensated for all wage and other losses sustained account this summary dismissal.
4. Baggage and Mail Handler Haskell E. Sharpe's record shall be cleared of all alleged charges or allegations which may have been recorded thereon as the result of the alleged violation named herein.

OPINION OF BOARD: This is a discipline case. Claimant was discharged from the service of the Carrier on July 9, 1963, on a charge of having left his assignment without permission.

The following facts are deemed to be relevant and material. On June 27, 1963, Claimant was supposed to report for duty at 11:00 P. M. as an extra baggage and mail handler. He did not report until about 11:40 P. M., and was assigned to a gang working the 12:00 midnight to 8:00 A. M. shift. Claimant protested the assignment and, particularly, having to work later than his usual relieving time of 7:00 A. M. Upon being informed he would be expected to work the full tour of duty of the assignment, Claimant said he could report sick. He was warned he could do so "if he could get away with it." He worked from 12:00 midnight until about 7:00 A. M. when he again informed the officer in charge that he could not work until 8:00 A. M. and that he could report sick. Again he was warned as in the first instance but at approximately 7:15 A. M. Claimant reported sick and left his assignment.

By letter dated June 28, 1963, Claimant was notified to report to the General Baggage Agnet at 9:00 A. M., July 2, on charge of:

"At about 7:15 A. M. Friday, June 28, 1963, you left your assignment without permission."

Following the investigation, Claimant was dismissed from service effective July 9, 1963.

Although the Employees cite and rely upon several schedule rules, the Board finds that Rule 24, the discipline rule of the Agreement, alone is applicable. As we have heretofore said, this is a discipline case and, that being so, our consideration of the case on appeal is necessarily confined to a review of the facts and evidence of record to determine whether Claimant's procedural and substantive rights under the applicable discipline rule were fully protected.

Accordingly, the Board has reviewed the record, including the transcript of the investigation proceedings, and finds no breach of Claimant's procedural rights under Rule 24. Notice was timely given and the charge was sufficiently precise. Reasonable opportunity to obtain representation and witnesses was afforded. The hearing was conducted in a fair and impartial manner and was timely held. The allegation that Carrier should have called additional witnesses is without merit. The rule grants to the accused employee "reasonable opportunity" to obtain "necessary witnesses". That opportunity was offered and declined by the representative of the Claimant at the start of the investigation. Again at the end of the proceeding, opportunity was given for comments and objections by the accused or his representative and again no mention was made of the need for the testimony of additional witnesses. On this state of the record, then, the Employees may not be heard to complain now. (See Award 12000.)

As to the severity of the discipline imposed, the Board is fully aware of the fact that dismissal from service is the most drastic punishment which can be imposed upon an employee and we have been quick to modify such discipline whenever there are mitigating circumstances or the evidence clearly shows an abuse of discretion by a carrier. Here, however, the record shows Claimant entered the service of this Carrier on September 29, 1960. He was dismissed from such service in November, 1962, on several charges of a serious nature, but was restored to service on a leniency basis in March, 1963. Some three and one-half months later Claimant again became involved in an incident giving rise to a charge of insubordinate conduct. Under these circumstances the Board cannot find that the discipline assessed by the Carrier was unreasonably harsh or excessive. Nor was it improper to take into consideration the past record of Claimant in measuring the degree of discipline to be imposed. (Awards 12661, 12492, 12243.)

From the uncontroverted evidence in this case, it is clear, and the Board so finds, the Claimant's refusal to complete his assigned tour of duty amounted to insubordinate conduct. It may well be that he believed he was being required to perform work contrary to local practice and custom or in violation of the rules of the Agreement. If so, his remedy lay in the grievance machinery of the Agreement; i.e., by filing a claim or grievance under Rule 26, after complying with instructions given.

The claim will be denied.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1964.