

Award No. 12987

Docket No. CL-14666

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5480) that:

(1) The Carrier violated the rules of the Clerks' Agreement of December 1, 1965, as amended, when it arbitrarily and capriciously dismissed Head Clerk W. C. Whitaker, Office of Auditor of Disbursements, Savannah, Georgia, from its service following investigation held on January 15, 1963, and that, therefore,

(2) Mr. W. C. Whitaker shall now be restored to his position of Head Clerk, Office of Auditor of Disbursements, Savannah, Georgia, Accounting Department, with seniority and all other rights unimpaired, and

(3) Mr. Whitaker shall now be compensated for all wage loss sustained from and including Monday, January 14, 1963 and continuing thereafter for each work day until he is restored to service.

OPINION OF BOARD: Claimant, W. C. Whitaker, on January 10 and 11, 1963, occupied a position of Head Clerk in the office of the Auditor of Disbursements of Carrier at Savannah, Georgia. His regularly assigned workweek was Monday through Friday, the same as for all clerks in the office. Office hours were from 8:20 A. M. to 4:50 P. M., with 30 minutes for lunch.

Thursday morning, January 10, 1963, Claimant reported to the office ahead of his starting time and placed a VACATION REQUEST slip on the desk of the Chief Clerk requesting permission to take the day off for vacation. The Chief Clerk, at the start of the workday, wrote on the request slip that it was declined and promptly returned it to Claimant. About 9:00 A. M. the Chief Clerk found the same VACATION REQUEST slip on his desk with a memorandum from Claimant asking the Chief Clerk to reconsider the request. The request was again declined and returned to Claimant. At about 10:30 A. M. the Chief Clerk saw Claimant leave the office with his coat and hat on and upon inquiry found that Claimant had not received permission to leave. Returning to his desk the Chief Clerk found the following memorandum from Claimant in his incoming mail basket:

"I left at 10:35 A. M. Sick."

Claimant absented himself from the office the remainder of January 10 and all of January 11.

Under date of January 11, Carrier charged Claimant with leaving the office and being absent from work without permission and set the date for an investigation proceeding.

A reading of the transcript of the investigation discloses that Claimant was given a fair hearing; and, the conclusion is inescapable that having failed to obtain permission to take vacation as requested Claimant contrived the sick leave ruse.

Carrier's finding that Claimant was guilty as charged is supported by substantial evidence.

Claimant was dismissed from service on January 21, 1963.

The sole issue before this Board is whether the discipline imposed was excessive.

Claimant had been employed by Carrier for approximately forty (40) years at the time of the incident herein involved. His propensities were known to Carrier. Because of this we find that the penalty—discharge from service—was excessive. In our Award we will provide that Claimant be reinstated to the status he would have absent his dismissal. We do not condone Claimant's conduct. We will deny the prayer in the Claim that Claimant be made whole for loss of wages.

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 penalty of dismissal from service assessed against Claimant, W. C. Whitaker, was excessive within the contemplation of the Agreement.

AWARD

Claim sustained in part and denied in part as set forth in the Opinion, above.

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.