

**Award No. 14163
Docket No. CL-14849**

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**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5521) that:

(a) Carrier violated the Clerks' Agreement when on January 18, 1963, it dismissed Mr. Eustacio Montoya from service based on charges not proved; and,

(b) Carrier shall now be required to restore Mr. Eustacio Montoya to service with all rights unimpaired, clear the record of the charge, and compensate him for net wage loss under the terms of Rule 52 of the Agreement.

OPINION OF BOARD: Claimant entered Carrier's service as laborer on June 1, 1951 at its Sacramento General Stores. While furloughed from the Store Department he was given employment as Extra Mail Handler at Sacramento Baggage Room on August 20, 1958 and continued in Carrier's service working, intermittently, for the Store Department and in the Baggage Room, as his seniority permitted.

On January 2, 1963, Carrier served Claimant with the following notice:

"You are hereby notified to be present at the office of Trainmaster, Room 203, 10:00 a.m., January 9, 1963, for formal investigation in connection with your alleged absence from duty without proper authority on December 23, 1962, at 7:00 a.m., for which occurrence you are hereby charged with responsibility which may involve violation of those portions of Rule 810 of the General Rules reading: 'They (employees) must not absent themselves from their employment without proper authority. They must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty.'

"You are entitled to representation in accordance with your agreement and to bring to the investigation such witnesses as you may desire."

Our study of the record discloses that: (1) the investigation was conducted with satisfaction of due process; and (2) there is evidence of record, which if believed, supports Carrier's finding that Claimant breached the Rule as charged. Left to our review is whether the discipline imposed — dismissal from service — was excessive.

Considering Claimant's seniority and the nature of the offense, we find the discipline imposed was excessive. We will award that Claimant be restored to service with all rights unimpaired; but, without compensation for net wage loss for the period from the date of his dismissal to the date of restoration to service.

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 Carrier's findings as to Claimant being guilty as charged are supported by the record; but, the disciplinary action imposed was excessive.

AWARD

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1966.