

Award No. 14377
Docket No. CL-15297

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5670) that:

(a) The discipline imposed by the Carrier against Clerical employe, Mr. J. R. Andrews, Inman Yards, Atlanta, Georgia, for his alleged mishandling of cars ETTX 500263 and TTX 500295 which arrived on train No. 153 at about 9:00 A. M., October 11, 1963, was unreasonable and a violation of our Agreement rules.

(b) Mr. J. R. Andrews shall be restored to the service of the Carrier with seniority and all other rights unimpaired.

(c) Mr. Andrews shall be compensated one day's pay each date, five days a week, beginning from the date he was dismissed until he is restored to service.

OPINION OF BOARD: On October 12, 1963 Claimant was dismissed from service as a yard clerk at Carrier's Inman Yard in Atlanta for erroneously listing two carloads of automobiles as being consigned to Atlanta instead of the correct destination of Jacksonville, Florida. The error resulted in a 24 hour delay to the cars.

At Claimant's request, an investigation was held. Subsequent to the hearing, the dismissal was confirmed, and an appeal to this Board was progressed.

On December 24, 1964 Claimant, as a matter of leniency, was reinstated without pay for time lost. Claimant elected not to return to work, but requested and was granted a leave of absence until March, 1965 to complete a course of study at a school in Tennessee which he had been attending since dismissal. The record does not indicate whether or not he has returned to work for Carrier.

It is clear from the record that there was substantial evidence to support the charge against Claimant. Further, by Claimant's own admission he was accorded a fair and impartial hearing.

The only question in this claim, as in the two preceding companion claims (CL-15295 and CL-15296), is whether the Carrier, in assessing penalty, was arbitrary, capricious, or otherwise abused its discretion.

Absent anything to the contrary, we would have held in this claim that the Board would not substitute its judgment for that of the Carrier even though we may have considered the penalty harsh or excessive.

For the reasons expressed in Award 14375 (CL-15295), we find that a six-month suspension without pay was sufficient penalty.

Pursuant to Award 13986, Carrier is entitled to deduct wages that the Claimant earned or could have earned with reasonable diligence.

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 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 Agreement was violated.

AWARD

Claim sustained consistent with this Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1966.