

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, 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-5635) that:

(a) The Carrier's representative did not accurately determine that clerical employe, Mr. W. H. Tipton, was guilty of the offense with which he was charged.

(b) Carrier violated the Agreement at Hayne Yard, South Carolina, by removing Clerk W. H. Tipton from service.

(c) Mr. W. H. Tipton shall now be allowed the compensation he was required to lose from March 13, 1963, through March 24, 1963.

OPINION OF BOARD: The Organization filed the instant claim on behalf of the Claimant, seeking compensation for the loss of ten days' wages resulting from his dismissal from service, prior to his subsequent reinstatement on a leniency basis.

As part of his regular relief assignment, the Claimant worked the yard check clerk position at Hayne yard on the third shift. This assignment started at 11:00 P.M. on March 6 and ended at 7:00 A.M. on March 7, 1963. On March 7, at approximately 3:15 A.M., Train No. 155 arrived at Hayne yard and picked up a block of southbound cars. Included in said block were 10 cars which departed Hayne without waybills. Consequently, the Claimant was dismissed from service for his failure to properly check these cars and for being derelict in permitting them to depart without accompanying waybills.

Thus, the issue before this Board is whether or not the Claimant was responsible for said violation.

An investigation was held on the property on March 11, 1963, to determine the Claimant's responsibility in permitting the 10 cars to depart Hayne yard without waybills. The testimony disclosed that the Claimant worked this job one day a week. He testified that it was his duty to check these cars and to have the waybills accompany the cars. On the day in question in order "to speed up the operation and to save a lot of unnecessary walking," he checked the cars as they were being shoved by the yard office. He also admitted that the best way to check them would be "after they have been placed in the track

from which they are to depart, and this track is closed out." He further stated that he did not check the cars properly.

In view of the Claimant's own admissions at the investigation, this Board would be usurping its powers were it to substitute its judgment for that of the Carrier. Innumerable awards of this Board have enunciated the controlling principles in discipline cases. In the absence of sufficient evidence of probative force warranting an abuse of discretion on the part of the Carrier, we will not presume to reverse or modify the Carrier's disciplinary decision unless it has acted in an unreasonable, arbitrary, capricious or discriminatory manner. Viewed in this light, and after a thorough analysis of the facts, we can find no basis to support the claim. We would add a further note that inasmuch as the issue concerning the Brown System of Discipline was not raised on the property, we are not disposed to consider it at this level.

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 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 29th day of July 1966.