Award No. 16467
Docket No. CL-16502

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6026) that:

(a) Carrier violated the Agreement at Greenville, South Carolina, when it suspended Mr. P. F. Walters, Yard Clerk, from service, without pay, beginning February 5, 1965 and ending 12:01 A. M., March 9, 1965, for alleged mishandling of SP 124633, on February 3, 1965.

(b) Mr. Walters shall be compensated at his daily rate of pay for twenty-two (22) days, the time lost while suspended.

OPINION OF BOARD: On February 3, 1965, Train No. 155 South was being assembled. The Claimant Clerk had checked the train, and was in the yard office pulling and lining up the way-bills, when he was informed by the Yardmaster that an engine was bringing around nine cars for Atlanta which were to be made a part of Train No. 155. Claimant checked the nine cars, went back into the office to pull the bills and found only 8 bills for eight cars. He was unable to find a waybill for car SP-124633 in the South rack, but inasmuch as that particular car was chalk marked 648 (Atlanta), the same as the other eight cars, and relying on the instructions of the Yardmaster, he concluded that the car was an empty, and filled out a form 85 to run the car to Atlanta as an empty. This particular car had already been delayed and was actually scheduled to go North to Gaffney, instead of South to Atlanta. Carrier contends that Claimant should have looked for the way-bill in the North rack, and by so doing would have avoided any difficulty. By assuming that the car was empty, and forwarding it south without a way-bill, Carrier argues that Claimant was responsible for unnecessary delay, the final result of which was a dissatisfied shipper.

By letter dated February 4, 1965, Claimant was dismissed from service for his responsibility in the mishandling of the car. On February 8, 1965, the Division Chairman of the Clerks requested an investigation under the provisions of Rule 40 of the Clerks' Agreement. An investigation was held on February 12, 1965, and Claimant was informed by letter dated February 17,

1965, that he was "suspended from service, without pay, beginning February 5, 1965, and ending 12:01 A. M., March 9, 1965. Thereafter you will be expected to protect your assignment." It is for the above period of time that the claim has been submitted.

Claimant has been an employe of the Carrier for over forty three years. As far as the record before us is concerned, there is no evidence that he has been a problem employe, or has been negligent in similar type situations. There is no question that he was partially responsible for the delay to the car, and there is no question that some embarrassment resulted in shipping a loaded car South as an empty when it should have been sent North as loaded to Carrier's customer. It would appear from the evidence that Claimant was pressed for time and possibly relied too heavily on the instructions of the Yardmaster. He conceivably should have checked the North rack for a waybill, and conceivably should have done other things which might well have avoided the further delay of the car. We do not underestimate the importance of the matter before us, nor do we condone negligence or carelessness in the handling of Carrier's business. We do, however, think that in deference to Claimant's long period of service, and in the absence of any evidence showing similar malefactions by this Claimant, the original dismissal from the service was a gross and flagrant abuse of the power vested in the Carrier. We think that Carrier recognized that this dismissal was beyond the realm of reasonableness when it subsequently reduced the discipline to the suspension now before us. One cannot be too emphatic in the interest of good, sound labor relations to say that such decisions as were rendered by Management in this case, particularly the original decision of dismissal, can do nothing other than to lead to a strained relationship between Management and labor which inevitably will effect the paramount public interest. Considering all factors in this case, it is our judgment that the suspension itself was too harsh a penalty to inflict. A written or oral reprimand would, under the circumstances peculiar to this case, have been more commensurate with the offense. In view of the foregoing, we will sustain the claim as submitted.

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 Employe 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1968.

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