



Award No. 19063
Docket No. CL-19373

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6956) that:

1. Claimant Loren Leon Johnson was improperly dismissed from the service of the Carrier following formal investigation held on February 12, 1970.
2. Carrier shall now be required to return Claimant Loren Leon Johnson to the service of the Carrier with all rights under the Agreement restored and reimburse him for all time lost commencing with March 7, 1970, at the rate of pay of the position of Yard Clerk.

OPINION OF BOARD: Petitioner contends that Carrier did not accord Claimant a fair and impartial hearing and that the Agreement was violated because Claimant was denied an avenue of appeal "when Superintendent rendered the decision and the first appeal had to be directed to the Superintendent."

As to the first of these contentions, we find that there is nothing in the agreement specifying who shall act as Hearing Officer at the discipline investigation. We further find that the mere fact that the Assistant Superintendent visited the Claimant while he was in jail in an attempt to induce him to resign rather than face the investigation, does not in and of itself render the hearing unfair where the hearing was otherwise fair and regular. Moreover, the record reveals that the Assistant did not pass judgment on the Claimant. That was done by the Superintendent. Award 16602, 16849, 17981.

We now will consider whether Claimant was denied an avenue of appeal under Rule 45(b) and 46. After the hearing the Superintendent notified Claimant that the charges that he had been absent without leave for three days and that he had been convicted in Spokane Criminal Court of the offense of contributing to the delinquency of a minor had been sustained. In the same letter Claimant was notified of his dismissal. Thereupon Petitioner appealed the dismissal to the Superintendent who rejected the appeal. Then Petitioner

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appealed to the General Manager, the highest officer designated to handle such disputes. Upon the rejection of the appeal by the General Manager the Claim was brought to this Board.

We have considered the cited Rules in the Agreement and the Awards urged by both parties. We are unable to perceive how, in the circumstances of this case, Claimant was dealt with unfairly. We affirm Awards 15714 and 16347 noting that it was alleged without refutation that this is the established method of handling discipline cases on the property.

As Claimant was not denied any procedural rights to which he was entitled and as Carrier's decision is based on substantial evidence in the record we shall deny the Claim.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March 1972.