

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19870
Docket Number CL-19971

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7162) that:

(a) Carrier violated the Agreement at Chattanooga, Tennessee, when it dismissed Mr. John K. Thompson from the service of the Carrier for allegedly mishandling car SOU 44806 by failing to match waybill with car.

(b) Claimant Mr. John K. Thompson shall be compensated for all time lost between December 23, 1969, and January 31, 1970.

OPINION OF BOARD: Claimant, on the date in question, was assigned as a Utility Clerk in the deButts Yard of Carrier in Chattanooga, Tennessee with hours of 7:00 A.M. to 3:00 P.M. His duties included making lists of cars, assisting train clerks, working No-Bills and Astray Bills. On December 6, 1969 a waybill was not matched with a particular car loaded with merchandise and the car was moved to a terminal as an "empty". When the error was discovered the car was routed to its destination, but with a delay of over two days. By letter of December 16, 1969, the shipper wrote to the Carrier's President complaining bitterly and informing him that an alternate means of transportation (trucking) would be used henceforth.

On December 23, 1969 Claimant was notified that he was dismissed from service for failure to match the car with the waybill. Upon Petitioner's request, an investigation was held on December 31, 1969 which resulted in an affirmation of the previously imposed discipline. On January 29, 1970, Claimant was informed that he would be reinstated to service on a leniency basis, with all rights unimpaired but without pay for time lost which would serve as the discipline.

The record of the investigatory hearing indicates that Claimant's rights were not impaired by the process in any respect. The facts with respect to the alleged error adduced at the investigation were somewhat equivocal; however, in accordance with our long standing practice, we shall not substitute our judgment for that of the Carrier. Given the guilt of Claimant, there remains the question of whether or not the discipline imposed was appropriate. Claimant had some twenty-three years of service with Carrier and an apparently unblemished record; clearly dismissal for carelessness in handling the waybill in question was not warranted and neither was the reduction to a thirty-eight day disciplinary suspension.

We find that the discipline imposed was arbitrary and unwarranted and shall be reduced to a fifteen day suspension. Claimant shall be made whole for all time lost in excess of fifteen days.

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,

A W A R D

Claim sustained in part; claimant shall be compensated for time lost in excess of fifteen days.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July 1973.