

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20615
Docket Number CL-20668

Francis X. Quinn, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline & Steamship Clerks
(Freight Handlers, Express and Station Employees
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Board of Adjustment No. 218
(GL-7510) on the Lake Region, Norfolk and Western
Railway Company, that:

1. Carrier violated the Agreement between the parties when on July 10, 1973, they arbitrarily held a hearing on Clerk C. W. Patterson, eleven (11) days after he was taken out of service.
2. Carrier further violated the Agreement between the parties when on July 18, 1973, they arbitrarily and capriciously dismissed Mr. Patterson from service.
3. The carrier's action was unjust, unreasonable and an abuse of carrier's discretion. The discipline was assessed with complete disregard of our working agreement.
4. Carrier shall now reinstate Mr. C. W. Patterson with full rights and privileges unimpaired.
5. Carrier shall compensate Mr. Patterson for each day held out of service.
6. In addition to the monetary amount claimed herein, carrier shall pay claimant an additional amount of ten percent (10%) interest compounded annually.

OPINION OF BOARD: Our review of the record indicates that the Carrier failed to consider the mitigating circumstances causing Claimant to lose his temper. The Yardmaster, a supervisor, was provocative toward Claimant.

There is evidence to support Carrier's findings of responsibility by claimant. His actions are in no sense to be supported, but in view of the mitigating circumstances, Claimant did not deserve the supreme penalty of dismissal from service.

Therefore Claimant will be reinstated with full rights and privileges unimpaired but without any monetary compensation.

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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 violated to the extent shown in Opinion.

A W A R D

Claim sustained to the extent and in the manner set forth in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February 1975.