

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20909
Docket Number CL-21175

William M. Edgett, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Southern Pacific Transportation Company
(Texas and Louisiana Lines

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7922) that:

(1) The Carrier violated the current Clerks' Agreement at Houston, Texas, when on July 30, 1974, it arbitrarily and capriciously discharged Clerk R. Cheeks from the service of the Southern Pacific Transportation Company, Texas and Louisiana Lines, without just and sufficient cause.

(2) Clerk R. Cheeks be restored to the service of the Southern Pacific Transportation Company, Texas and Louisiana Lines, with full seniority, vacation and other employee rights restored unimpaired, paid a day's pay for July 30, 1974, and each subsequent date thereafter he could have performed service for the Carrier.

(3) The Southern Pacific Transportation Company, Texas and Louisiana Lines, be required to clear Clerk Cheeks' service record of the charges and discipline assessed in regard to the case at hand.

OPINION OF BOARD: Claimant was dismissed from Carrier's service after an investigation held to determine whether he had violated Rule 810, which reads:

"810. Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority. They must not engage in other business without permission of the proper officer.

"An employee subject to call for duty must not absent himself from his usual calling place without notice to those required to call him.

"Employees must not sleep while on duty. Lying down or assuming a reclining position, with eyes closed, or eyes covered or concealed, will be considered sleeping."

The record contains evidence from which Carrier concluded that Claimant had made a misstatement of fact when he said he was sick during a period of absence. Review of the record shows that Carrier's finding was based on evidence which was of a compelling nature. The Board has no grounds upon which it could base a reversal of Carrier's finding.

The Employees have argued a number of defenses with vigor. However, the Board agrees with Carrier that the central point in this claim is that permission to be absent for sickness becomes an unauthorized absence when the person who represents that he is sick is not, in fact, sick. That is the basis of Carrier's action here and, as noted, that finding is amply supported by the record. Such a finding also disposes of the employee's argument that Claimant was not given the benefit of Rule 49. That Rule is not designed to provide leave for one who misstates the reason for requesting leave.

Claimant's record of prior offenses was considered by Carrier for the sole purpose of establishing the proper measure of discipline. No impropriety is involved in the use of a past record for that limited purpose.

Based upon the entire record in this case the Board has concluded that the claim must be denied.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1976.