

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21058
Docket Number CL-21297

Irwin M. Lieberman, 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-7954, that:

1. The Carrier violated the current Clerks' Agreement at Houston, Texas, when on June 24, 1974, it arbitrarily and capriciously discharged Clerk Howard D. Abbs from the service of the Southern Pacific Transportation Company, Texas and Louisiana Lines, without just and sufficient cause.

2. Clerk Howard D. Abbs 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 June 24, 1974, and each subsequent date thereafter he could have performed service for the Carrier.

OPINION OF BOARD: Claimant was employed by Carrier on November 21, 1972. On June 24, 1974 Claimant was absent from his assignment and was subsequently dismissed from service. Following a hearing, in accordance with the applicable Agreement, the discipline was reaffirmed.

Certain procedural questions were raised by Petitioner during the handling on the property, but were not brought to this Board. However, Petitioner objected to certain exhibits appended to Carrier's submission which had not been handled on the property. Petitioner's position is sound and the documents in question will not be considered; it is long established that such "new evidence" is inadmissible at this stage of the procedure.

A study of the transcript of the investigation reveals that Claimant's defense for his absence was based on his illness and the fact that his wife allegedly notified Carrier of his problem. It must be observed, however, that although he presented a doctor's certificate, that document does not indicate that he was disabled and unable to telephone concerning his absence; the document simply indicates that Claimant was under a doctor's care on the date in question. Further, it is agreed by all in their testimony that Claimant's wife telephoned Carrier's office at about 2:00 P.M. on June 24. There is some uncertainty as to the import of her telephone call with one version being that she was checking on whether Claimant was at work

and reporting his absence if he was not present, and the other version being a message for Claimant concerning some car trouble she was having. In any event, the evidence is that there was no notification of Carrier until at best 2:00 P.M. that he would not be at work that day, even though his starting time was at 7:00 A.M. We must conclude, therefore, that there was ample evidence of record to support Carrier's conclusion that Claimant did not have permission to be absent.

Unauthorized absences are serious offenses in this industry and often result in dismissal from service (see Awards 14601, 16860 and 17750 among others). Petitioner has offered no mitigating argument with respect to Claimant's prior record. As we said in Award 14601 in a dispute related to that herein, in the light of the broad latitude accorded Carrier's in assessing discipline, "we will not upset the punishment decided upon by the Carrier, even though the sanction chosen may be greater than that which the Board might choose."

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 Employee involved in this dispute are respectively Carrier and Employee 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. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1976.