

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21346
Docket Number CL-21574

William G. Caples, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees
{
The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8095) that:

(1) Carrier violated the Rules of the Clerks' Agreement when it dismissed Mr. Joseph Johnson, Jr. from the service of the Company on April 28, 1975, and

(2) Mr. Joseph Johnson, Jr. shall be paid 8 hours' pay at the rate of \$40.69 beginning May 1, 1975, and each subsequent date, 5 days per week, until he is restored to service of Carrier with all rights unimpaired.

OPINION OF BOARD: Claimant was hired by Carrier on April 5, 1970, and held the position of Cleaner in Carrier's General Offices Building at Baltimore, Maryland until April 28, 1975. After an investigation of a charge of failure to properly protect his assignment, absence without permission and failure to properly notify Carrier of his whereabouts, the Carrier found the Claimant at fault and dismissed him from service.

The Carrier had, prior to this investigation, disciplined Claimant for failure to protect his assignment and had suspended him from service on three (3) prior occasions. After such suspensions, Claimant's work record improved.

The sole issue before the Board concerns the appropriateness of the penalty imposed by the Carrier.

Discipline is meted out with the hope that it will change a behavior pattern of an employe in the manner in which he performs his work assignments and as an example for training purposes of other employes. Although the Board recognizes that any unauthorized absence from work during working hours is a serious offense and can, in a proper case, justify dismissal, the Board does not believe it does so here.

It is the opinion of the Board that the discipline imposed by Carrier has served its purpose. The Board is of the opinion that the Claimant be returned to service without back pay, but with all other rights

unimpaired and that the disciplinary action be made a part of Claimant's record. The Claimant should understand without any question that it is absolutely mandatory and necessary that he maintain a reasonable attendance record and that he be a dependable employe of the Carrier. This is the final opportunity for Claimant to correct his improper conduct. The Board expects him to fully live up to the obligation to his job.

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 Employes involved in this dispute are respectively Carrier and Employes 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 discipline imposed was excessive.

A W A R D

Claim sustained in part. Claimant shall be restored to service with seniority and other rights unimpaired, but without pay for time lost while out of service.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

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



NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 21346

DOCKET NO. CL-21574

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees

NAME OF CARRIER: Baltimore and Ohio Railroad Company

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

Initially, we are inclined to remind the parties that the purpose of an Interpretation is to clarify an Award. It is not a means to reargue the original claim or to pursue new or additional aspects of the original claim.

The decision in Award No. 21346 was that claimant, a dismissed employe, should: ". . . be returned to service without back pay, but with all other rights unimpaired. . ." Claimant was restored to service by the Carrier in January, 1977.

The petitioning representative organization has asked that claimant be allowed a paid vacation in the calendar year 1977 because Award No. 21346 restored him to service "with all other rights unimpaired."

Carrier has contended that they have fully complied with the intent of Award No. 21346 and that no vacation pay is due claimant in calendar year 1977 because he did not qualify therefor in calendar year 1976.

Our decision in Award No. 21346 was intended only to convert the assessment of discipline by dismissal to discipline by suspension to cover the period of time from the original date of dismissal to the date of return to

service. We do not interpret the language in our Award as granting to claimant any rights under the National Vacation Agreement other than those for which he would have been properly entitled if, instead of having been dismissed in the first instance, he was suspended from service from April, 1975 to January, 1977.

Referee William G. Caples, who sat with the Division as a neutral member when Award No. 21346 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1978.

