

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21512
Docket Number CL-21572

Joseph A. Sickles, Referee

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

PARTIES TO DISPUTE:

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(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8091) that:

1. Carrier violated the Agreement between the parties when on May 1, 1975, they arbitrarily and capriciously dismissed Mr. R. L. Brown.
2. Carrier's action was unjust, unreasonable and an abuse of Carrier's discretion.
3. Mr. Brown shall be reinstated with all rights and privileges unimpaired and paid for all lost time.
4. In addition, Carrier shall pay Claimant twelve percent (12%) interest on all monies due.

OPINION OF BOARD: On March 20, 1975, Carrier advised Claimant to appear for investigation to determine responsibility in connection with a train passing a "stop and stay" indication.

Subsequent to the investigation, the Claimant was dismissed from service.

The Claimant has raised a number of asserted procedural defects in the handling of the investigation - alleging that the officer who assessed the discipline was biased, witnesses were not sequestered, the charges were not specific, the hearing was not held in a timely manner, etc. Based upon the totality of the record, we are inclined to find that Claimant has not presented a showing that he was denied "due process" in the procedural aspects of the case.

The evidence shows that Claimant gave a yard crew permission to pass a "stop and stay" indication, without first receiving authorization from the dispatcher. While we feel that Claimant's actions were improper, and that discipline was warranted, we have also noted that there were certain extenuating circumstances presented and that he did not display an utter disregard for his responsibilities. In addition, we have noted the Claimant's many years of service.

Based upon the entire record, we are inclined to restore Claimant to service with retention of seniority and other rights, but without compensation for the period of the suspension.

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 discipline was excessive.

A W A R D

Claim sustained to the extent set forth in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

C. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1977.

