

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21864
Docket Number CL-22037

Don Hamilton, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Denver and Rio Grande Western
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8387) that:

(1) Carrier acted arbitrarily, capriciously and without sufficient justification when it dismissed Clerk J. R. Aiello from service on April 30, 1976 following an Investigation held at Salt Lake City, Utah on April 22, 1976.

(2) Carrier shall now restore Clerk J. R. Aiello to service with seniority and all other rights unimpaired.

OPINION OF BOARD: The Claimant was dismissed from the service of the Carrier for absences from duty without proper authority.

The notice advising the Claimant of the formal investigation identified the period of absence as being "since April 1, 1976." Evidence was introduced concerning absences prior to April 1, 1976, and that evidence is disregarded by the Board as a result of the date specified in the notice for the formal investigation.

The Claimant accepted employment as a contract truck driver in addition to his employment with the Railroad. He did not seek to obtain permission of the Carrier to engage in this outside activity because he said "I don't feel I have to have their authority to do something on my own time on my own hours."

The evidence is clear and convincing that the work the Claimant performed as a contract truck driver was not performed only on his own time, but did, in fact, infringe upon his obligation to protect his assignment with the Carrier.

The Claimant requested a leave of absence which was denied by the Carrier. It would appear that when the Carrier denied the request, it was the prerogative of the Claimant to elect whether he wanted to continue to work for the Railroad or whether he desired to pursue his second job as a contract truck driver. It further appears that he made his election and that he placed his responsibilities as a contract truck driver ahead of his duties with the Railroad.

The failure of the Claimant to fulfill his duties and protect his work assignment has been shown to be wilful and because of his wilful failure to properly report to work, the Carrier acted in accordance with the Agreement in discharging the Claimant.

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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1978.