

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21919
Docket Number CL-21894

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8273, that:

(a) The Southern Pacific Transportation Company violated the Clerks' Agreement **extant** when it dismissed Mr. J. D. Keithley from service following investigation at which it failed to prove its charge; and,

(b) The Southern Pacific Transportation Company violated Rule 49 of the Agreement when it rendered an untimely decision contrary to the express terms thereof; and,

(c) The Southern Pacific Transportation Company shall now be required to allow Mr. Keithley eight (8) hours' compensation at the rate of Telegrapher Clerk September 8, 1975 and each date thereafter until restored to service with seniority rights, insurance rights, hospitalization rights, and all other Agreement rights to which he is entitled.

OPINION OF BOARD: Claimant was dismissed from service for failing to protect his assignment as required under Rule 810, which reads in part:

"Employee must report for duty at the prescribed time and place"

The Claimant's allegation that he was unaware of the requirement to work for the full week in question is without merit. The Carrier's judgment that he knowingly failed to report on the day in question is well founded.

Severity of the penalty is fully supported by Claimant's disciplinary history, which includes dismissal and reinstatement on a leniency basis for a similar offense.

On a procedural basis the Organization claims that the Carrier failed to follow Rule 49, Appeals and Representation, in the provision which states:

" . . .The officer receiving notice of such protest will render decision within fifteen days, or if the notice includes request for conference, render decision within fifteen (15) days from date of conference, such times subject to extension by mutual agreement. . . ."

The Organization alleges that Carrier's Superintendent prejudged the matter, in response to the Organization's appeal, by stating in a letter prior to the requested conference, that "I do not feel my decision was prejudice /sic/ or too severe and your request for multiple compensation until returned to service is denied."

The Superintendent had also issued the dismissal notice. It might have been well for him not to respond initially to the Organization in the negative manner quoted above. The Board, nevertheless, does not find this an error of substance, since the Superintendent did hold the requested conference and thereafter wrote a timely reply in denying the claim.

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;

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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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.