

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21948
Docket Number CL-21881

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Consolidated Rail Corporation
((Former Penn Central Transportation Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8246) that:

(a) The Carrier violated the Rules Agreement, effective July 1, 1965, particularly Rule 6-A-1, in that W. B. Clark, regularly assigned block operator, Overbrook Tower, 3:00 P.M. to 11:00 P.M., rest days Tuesday and Wednesday, rate of pay \$6.477 per hour, was unjustly dismissed for being absent from duty on Sunday, August 17, 1975.

(b) Clark was not given a fair and impartial trial, and the discipline was assessed in an arbitrary, capricious and discriminatory manner. Clark should now be restored to service with seniority and all other rights unimpaired and be compensated for all time lost since September 1, 1975. Clark should also be made whole for all medical expenses incurred while dismissed, which medical expenses would have been covered by Travelers Group Policy GA-23000.

OPINION OF BOARD: Claimant was a regularly assigned Block Operator who, as of August 1975, had approximately four years' service.

On August 17, 1975, Claimant was expected to protect his assignment from 3:00 p.m. to 11:00 p.m., and there is no question but that he failed to do so, although he telephoned the proper office twice: first, to advise that he would be late, and the second time, to advise that he would be so late that he would "mark off."

Claimant's discipline history, considered by Carrier after hearing and proof of Claimant's failure properly to protect his assignment on August 17, 1975, appears in the record. It shows that Claimant was disciplined for failure to protect his assignment on August 8, 1975, and failure to report on time for his assignment on August 9, 1975.

The instance of August 17, 1975, is thus the third in a series of such instances during Claimant's employment -- all occurring within a ten-day period.

The Board concurs that Carrier properly concluded that Claimant was deserving of discipline and that disciplinary action is, and should be, intended to have a remedial effect on employees. The Board does not agree, however, that Carrier can properly conclude that the discipline administered for the August 8 and 9 incidents proved that it did not have the desired results, since the disciplinary suspension had not yet been served by the Claimant.

Claimant's obligations to the Carrier are spelled out by the Carrier as:

"Claimant had a distinct obligation to the Carrier either to report at his scheduled reporting time and fulfill his assignment or to notify his supervisor of his inability to do so sufficiently in advance of his scheduled reporting time so that a replacement could report on time . . ."

The Board concurs with that statement and includes it here so that Claimant might understand the Board's agreement therewith.

The Board holds that the discipline imposed has served its purpose and should be modified to a suspension and will order that Claimant be returned to service with all rights restored but without payment for anything during the period of suspension.

As in Award No. 21346 of this Division, Claimant should understand, without any question, that it is necessary for him to meet his obligation to the Carrier and that this Board's decision can be classed as giving Claimant "one last chance" to become and remain a responsible employee.

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

The claim is sustained only to the extent that the dismissal is set aside. Claimant shall be restored to service with retention of seniority and other rights, but without reimbursement for compensation or expenses incurred during the period of suspension.

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.