

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22107
Docket Number CL-22087

Irwin M. Lieberman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8364, that:

(a) Carrier violated the Agreement at Charlotte, North Carolina, when it orally dismissed Mr. Sam Broome, Laborer-Groundman from the service of the Carrier for allegedly failing to protect his assignment.

(b) Carrier shall be required to restore Mr. Broome to service with seniority and all rights unimpaired, and compensate him for all time lost beginning Wednesday, November 19, 1975 and continuing until restored to the service of the Carrier.

OPINION OF BOARD: This is a discharge dispute in which Claimant was restored to duty on a leniency basis by Carrier some six months after the original dismissal.

Petitioner alleges several technical errors on Carrier's part which it believes sufficient to support a sustaining award. While it is apparent that there was some informality in the actions of Carrier, we cannot agree with Petitioner; the Agreement was complied with in every essential respect. It was agreed that the hearing itself was fair and appropriately conducted.

With respect to Carrier's finding that Claimant was guilty of failure to protect his position, the record is quite clear and unambiguous. A reasonable conclusion to be reached after studying the transcript would indicate that Claimant took an unauthorized vacation beginning September 26, 1975. Further, he did not report back to work after the two-week vacation, alleging that he was ill. When asked to support his claim of sickness and inability to work with a doctor's certification, he simply never complied. Carrier attempted to contact Claimant to determine his status on at least seven occasions by telephone and one visit to his home to no avail. When finally Carrier wrote Claimant on November 3, 1975 and asked him to report to work or provide a satisfactory reason for not reporting within five days, he failed to comply within the period specified. It must be concluded, based on the above facts, that Carrier had sufficient grounds for its conclusion and action.

Concerning the measure of discipline imposed, it has long been established that this Board will not substitute its judgement for that of Carrier in disciplinary situations unless the action taken by Carrier may be characterized as arbitrary, capricious or discriminatory. In this dispute the discipline imposed, in the light of Claimant's past record and the particular infraction, is certainly reasonable.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 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 16th day of June 1978.

