

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22239

Docket Number CL-22151

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8416) that:

(1) Carrier violated the Agreement between the parties, when on April 18, 1975, it imposed discipline of 10 days actual suspension from service upon Cleaner Schelly H. Forrester, as a result of an investigation held on March 21, 1975, which was improper, and

(2) Carrier shall, as a result, be required to compensate Mr. Schelly H. Forrester ten (10) days' pay at the rate of his position for the period April 21 through May 2, 1975.

OPINION OF BOARD: In this discipline dispute Claimant was suspended for ten days for failure to protect his job on four days: November 29, 1974, December 2, 1974, January 20, 1975 and March 10, 1975.

The thrust of Petitioner's position was that the discipline imposed was excessive and that Petitioner was only found guilty on six of the ten dates originally specified by Carrier. Carrier, on the other hand, pointed out that Claimant had been disciplined by a five-day suspension in November of 1974 only days before the first date on which he was charged in this case, for a similar type of infraction.

An examination of the transcript of the investigation in this dispute reveals that there was no real question as to Claimant's guilt. He tacitly admitted that he had failed to protect his assignment on November 29th and couldn't remember why he was one hour late.

For the December 2nd date, Claimant admitted he just walked off the job because he "was discouraged - not ill." With respect to the January 20th date, Claimant could not remember why he did not report to work. Concerning the March 10th date, Claimant explained that he could not report to work since he was in jail due to a traffic violation. The record indicates that Claimant thought that he could absent himself with impunity if he telephoned in to report that he would not be in to work. Further, it is noted that at the very last portion of the investigation, the Local Chairman of the Organization acknowledged Claimant's guilt and asked for an "overhead suspension."

The sole remaining question to be resolved concerns the propriety of the discipline imposed. In a prior dispute involving the same parties, Award 21246, this Board held that unauthorized absences from work during working hours is a serious offense which could in proper cases justify dismissal. In this dispute we certainly cannot characterize the discipline imposed as being discriminatory, arbitrary or capricious. We cannot substitute our judgment for that of Carrier in situations such as this; hence, the Claim must be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 30th day of November 1978.