

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22368
Docket Number CL-22448

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8575) that:

1. Carrier violated the Agreement, between the parties, when on August 5, 1977, Mr. John R. Fields was dismissed without any chance to attend the investigation scheduled by the company.

2. The Carrier's action was unjust, unreasonable and an abuse of Carrier's discretion. The discipline was assessed without any proof whatever of the charges that were made.

3. This discipline shall be set aside and Mr. Field's request for a leave of absence will be granted until such time as he is able to appear.

OPINION OF BOARD: On June 14, 1977, claimant was imprisoned for a period of two (2) to five (5) years as a result of his guilty plea on a charge of attempted rape.

On July 5, 1977, claimant was advised by Carrier to appear for a formal investigation on the charge of unauthorized absence from duty since June 16, 1977. After one postponement granted at the request of claimant's representative, the investigation was conducted on July 29, 1977. Claimant, of course, was not present. By notice dated August 5, 1977, claimant was dismissed from service.

Although we recognize that each discipline case must be considered on its own merits, we find that this case is strikingly similar in all important aspects to the one handled by this Division in Award No. 20294. The principals are the same. The basic contentions of the petitioner are the same. We believe that the outcome must also be the same. We fully subscribe to and adopt the principles enunciated in Award No. 20294, which are quoted in pertinent part hereinafter:

"We have no difficulty in issuing a denial award under this record because Claimant himself, by his own misconduct in perpetrating a number of severe crimes of violence, affected his contractual right to be present at the investigation. There is absolutely no evidence of record to suggest that Carrier was a motivating factor in precluding Claimant's attendance."

We will deny 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;

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:

AW Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1979.