

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22613
Docket Number CL-22703

Paul C. Carter, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship
{ Clerks, Freight Handlers, Express and
{ Station Employees
{
(Illinois Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8684) that:

1. Carrier violated the Clerks' Rules Agreement when it arbitrarily and injudiciously dismissed Clerk Ricky L. Brown from its service on August 23, 1977 without justification.

2. Carrier's action in dismissing Clerk Brown from its service was unjust, unreasonable, arbitrary and an abuse of discretion because at an earlier date, Carrier had disciplined Clerk Brown by disqualifying him from the position of Shell Yard Clerk No. 427 on July 29, 1977.

3. Carrier shall now be required to reinstate Clerk Brown to service with all rights unimpaired, expunge the record of investigation from his personal record file and compensate him for all wage and other losses sustained.

OPINION OF BOARD: The record shows that claimant was employed by the Carrier as a clerk on April 16, 1974.

At the time of the incident leading to the dispute, claimant was assigned to position of Shell Yard Clerk at Roxanna, Illinois, with assigned hours 10:30 P.M., to 6:30 A.M. The position is located within the refinery of Shell Oil Company and has as its primary duties the responsibility of maintaining current and accurate records of car movements within the refinery.

Although claimant had last been assigned to the position involved (No. 427) on July 28, 1977, the record shows that he had previously occupied the position. Due to a situation reported to the Carrier by the Shell Company on July 29, 1977, which evidently resulted from the improper performance of work by claimant during the hours 10:30 P.M., July 28, to 6:30 A.M., July 29, 1977 claimant was removed

from the position and on August 9, 1977, was instructed to report for formal investigation on August 15, 1977, at 2:00 P.M. to:

"...develop the facts, discover the cause and determine your responsibility, if any, regarding your alleged failure to perform your duties on Position 427, Shell Yard Clerk, Roxana, Illinois on July 28, 1977 starting at 10:30 P.M. until 6:30 a.m. on July 29, 1977, and to determine if there were any General Rules and/or Operating instructions violated in connection therewith. At this investigation we will review your past personal record."

The investigation was conducted as scheduled, and a copy of the transcript has been made a part of the record.

The Board has carefully reviewed the copy of the transcript and the submissions of the parties. We find that none of claimant's substantive procedural rights was violated. The notice of charge was sufficiently precise to permit the claimant and his representative to prepare a defense. The investigation was conducted in a fair and impartial manner.

There was substantial evidence adduced at the investigation to show that claimant had not properly performed his duties. Also, claimant's prior work record was far from satisfactory. The fact that claimant's prior record was reviewed in the investigation was not in violation of the Agreement or prejudicial to the claimant.

Based on the entire record, the Board finds no proper basis for interfering with the discipline imposed by the Carrier.

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

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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 9th day of November 1979.