

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22688  
Docket Number CL-22575

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Illinois Central Gulf Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8600) that:

(1) Company violated the Agreement between the parties when they wrongfully dismissed Clerk J. M. Johnson, McComb, Mississippi from service of Company following an investigation held at McComb, Mississippi on June 3, 1977.

(2) Company now be required to return Clerk J. M. Johnson to service of Company, with pay for all time lost, his record be cleared with all rights and privileges restored unimpaired.

OPINION OF BOARD: On May 31, 1977, Claimant was advised to attend an investigation concerning asserted mishandling of several train orders which "...had alterations, interlineations, punctuations and flourishes..." and an asserted inability "...to clear Trains GC-6, NC-6 and #58, which necessitated in having to detour Train #58 around Trains GC-6 and NC-6, causing additional delays to this train."

Subsequent to the investigation, the Claimant was dismissed from service for violation of Rules 200, 206, 209, 209(a) and 731.

The Employee asserts that the charge against him did not comply with the "precise charge" requirement of the agreement and that he was dismissed for a violation of rules which were not included in the charge. He concedes that there is some possible basis for inclusion of Rules 200 and 209(a) within the framework of the allegations.

Further, the Employee asserts that the fact that he may have disposed of some uncompleted orders is hardly a dischargeable offense, especially since he was experiencing difficulty in hearing the Dispatcher because of excessive noise and since he was attempting to use an uncooperative typewriter. Moreover, he describes certain other factors as having a bearing on delays to trains.

Carrier produced evidence to show that on the day in question, it was necessary to recopy certain of Claimant's orders because of mistakes.

Unquestionably, the evidence demonstrates that the Employee did mishandle train orders on the day in question, and his actions were prohibited by applicable Company rules. Further, we feel that the charge against the Employee was sufficiently precise so as to form a proper basis to proceed, and the stated basis for the termination was not at variance with the charge.

We are aware, of course, that it is not incumbent upon this Board to substitute its judgment for that of the Carrier in cases such as this, unless we feel that the Carrier's action is arbitrary, capricious, etc. We confess that this case is not free from all doubt, but upon an extensive review of the transcript and the entire record, we feel that the imposition of dismissal was inappropriate. Accordingly, we will set aside the termination and restore the Claimant to duty, with retention of seniority and other rights, but without reimbursement for any compensation lost during the period of the suspension.

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 discipline imposed was excessive.

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Claim sustained to the extent stated in the Opinion of  
Board.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1979.