

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22827  
Docket Number CL-22891

Paul C. Carter, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8742)  
that:

(1) Carrier failed to adhere to the Agreement between the Parties when, on May 18, 1978, Mr. M. M. Gibson, III was assessed discipline of dismissal from Carrier's service which was excessive punishment, and

(2) Carrier shall now restore Mr. M. M. Gibson, III to service and compensate him for eight (8) hours' pay beginning May 18, 1978, and continuing for each subsequent date until such restoration to Carrier's service is effected.

OPINION OF BOARD: At the time of the occurrence giving rise to the dispute, claimant was assigned to the clerical Guaranteed Extra Board at Cincinnati, Ohio. On April 13, 1978, claimant was called to fill a vacancy on Position C-75, Janitor, 3:30 P.M. to 12 midnight. He refused to accept the call from the clerk who was responsible for the calling of extra employees. The Terminal Service Manager then called claimant and claimant told him that he was refusing to work the janitor position. Claimant was then served the following notice:

"Please attend investigation in the Office of Assistant Superintendent, 2815 Spring Grove Avenue, Cincinnati, Ohio at 1:30 P.M., Monday, April 17, 1978.

You are charged with refusing to accept position of Janitor, Position C-75, for April 13, 1978, assignment 3:30 P.M. to 12:00 Midnight.

Arrange for any witnesses and/or representative if you desire."

The investigation was conducted as scheduled, and on April 26, 1978, claimant was notified of his dismissal effective 12:01 A.M., May 18, 1978.

A copy of the transcript of the investigation has been made a part of the record. A review of the record shows that none of claimant's substantive procedural rights was violated. The transcript contains substantial evidence, including claimant's statement, in support of the charge.

Claimant should have protected the vacancy for which called and then handled through the grievance procedure if he considered that he was being mistreated or improperly called.

In the handling on the property, the Carrier stated that claimant had been disciplined on two previous occasions, once on March 25, 1976, when he failed to protect his assignment, and again on March 27, 1976, when he refused to make a track check.

Based on the entire record, there is no proper basis for this Board to interfere 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 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 April 1980.

