

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22909
Docket Number CL-22924

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8764)
that:

1. Carrier acted arbitrarily, capriciously and in a harsh and discriminatory manner when on August 8, 1978, it dismissed Clerk William Swain, Sr., following an investigation held on August 2, 1978, such action being violative of the current Agreement dated January 1, 1975.

2. As a consequence of the above violation, Carrier shall:

- (A) Reinstate William Swain, Sr. to the service with seniority and all other rights unimpaired.
- (B) Clear Claimant's service record and allow compensation and all other benefits lost as a result of Carrier's violative act, as well as interest payment at the current rate on the amount of reparation due.

OPINION OF BOARD: Claimant had about five years of service with the Carrier at the time of the occurrence giving rise to the dispute herein. On July 19, 1978, he was instructed to attend an investigation on July 26, 1978, on the charge:

"You are charged with insubordination and failure to protect assignment of A-Shift Crew Clerk, from 7:00 AM to 3:00 PM, at Tilford Yard on July 12, 1978, after being called for this job by C-Shift Chief Train Clerk J. L. Price and instructed to protect same by Office Trainmaster D. E. Strickland."

The investigation scheduled for July 26 was postponed and conducted on August 2, 1978. On August 8, 1978, claimant was notified of his dismissal from the service. A copy of the transcript of the investigation has been made a part of the record. A review of the transcript shows that none of claimant's substantive procedural rights was violated.

The record shows that on Wednesday, July 12, 1978, claimant was completing his regular third shift assignment as Piggyback Clerk at Carrier's Tilford Ramp, Atlanta, Georgia, when the first shift crew clerk position became vacant. Claimant was the only qualified available employee and he was called by the Chief Train Clerk to protect the assignment. When questioned as to claimant's response, the Chief Train Clerk stated:

"Q. Could you give us any information that you have in connection with his apparent failure to protect the job on this date?

"A. I called him and told him that he was going to have to protect it. He informed me that he had his wife's car and that he had to take it home to her and he couldn't work and I told him that he was the only man I had and he'd have to take that up with the agent on duty."

The Office Trainmaster testified in part:

"Mr. Swain (claimant) called me and told me that he had been called for the job, that he couldn't stay because he had to take his wife's car home. So I told Mr. Swain that was fine I would wait in the call office for him to take his wife's car home and come back and he said he could not do that. I told Mr. Swain that he had been called for the job and that he was to protect it. Again he said he couldn't do it. I told Mr. Swain I had no other choice, that I would have to hold him out of service pending an investigation"

All employees have an obligation to comply with instructions of their superiors, unless a real safety hazard is involved, which was not in the case herein. Claimant should have complied with the instructions, and if he considered that his rights under the agreement were being violated or that he was being improperly treated, he could have handled the matter through the grievance procedure. He could not be permitted to take matters into his own hands.

There is no proper basis for the Board to interfere with the discipline imposed.

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. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of July 1980.