

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22963
Docket Number CL-22854

Rodney E. Dennis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8735)
that:

(a) The Association violated Rules 1, 2, 3, 27, and 28, among others, of the Rules Agreement when it arbitrarily dismissed Claimant B. P. Boyle from service June 3, 1978.

(b) Claimant should now be restored to service with all seniority rights unimpaired and his record cleared.

(c) Claimant is also to be paid for all lost time including medical expenses, if any.

OPINION OF BOARD: Following the suspension of claimant, B. P. Boyle, on June 3, a hearing was held on the property. Boyle, a 17-year employe, was charged with failure to protect his assignment on June 2, 1977, being absent without authority on that date, and using foul and abusive language in a telephone conversation with the Assistant Manager of the Tariff Department (insubordination).

On June 14, 1977, as a result of that hearing, and after a review of claimant's personnel file, claimant was terminated from service.

Upon appeal of the decision, Carrier offered to return claimant to work, effective March 1, 1978, on a leniency basis only and with the proviso that he serve a one-year probationary period and waive all rights, in writing, to a hearing during that time. Claimant refused the offer and the termination remained in effect.

Based on the record before us, this Board concludes that claimant would have been wise to have accepted that offer. Despite the fact that he was a long-term employe, his attendance and tardiness record was aptly described by Carrier as "horrendous." In fact, he had accepted a five-day suspension and a twenty-day suspension on two occasions in the past in recognition of his long history of absences and his lack of punctuality.

Obviously, claimant did not learn from that experience. His failure to appear at work--when required and on time--could not be tolerated by Carrier. This Board has noted in numerous awards that at the heart of the industrial contract between employer and employee is the requirement that the employee adhere to duly constituted rules of attendance. Claimant in this case has consistently failed to do so.

Nothing in the record leads this Board to believe that Carrier was either arbitrary or capricious in its decision to terminate claimant.

Given the absence of questionable procedures on the part of Carrier or a failure to act reasonably in response to the events of June 2, 1977, the Board sees no reason to substitute its judgment for that of the employer.

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;

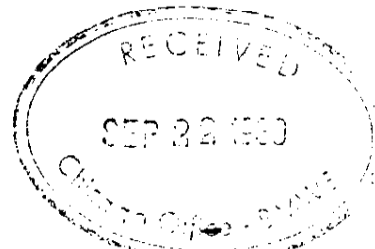
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1980.