

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23122**
Docket Number CL-23210

A. Robert Lowry, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
{ (Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8958) that:

Carrier violated the Agreement at Memphis, Tennessee, when on March 2, 1978, it dismissed Mr. S. K. Powell from all Carrier service for an alleged failure to protect his assignment on March 1, 1978.

For this violation, the Carrier shall be required to restore Mr. S. K. Powell to service with all rights unimpaired and compensate him for all time lost, beginning March 2, 1978, and continuing until such restoration is accomplished.

OPINION OF BOARD: On March 2, 1978, Mr. S. K. Powell, the claimant, was dismissed from the service of the Carrier for failure to protect his assignment as General Utility Clerk with ~~hours~~ 11:30 to 8:30 on March 1, 1978. The Organization under Rule C-2 of the Agreement between the parties dated May 1, 1973, requested and was granted an investigation, which was held on March 16, 1978. Copy of the transcript of the investigation was made a part of the record.

At the investigation the claimant was represented by a duly accredited representative of the Organization. A careful reading of the transcript reveals claimant was given a fair and impartial hearing with the right to present witnesses and evidence to support his position. Claimant, however, presented no witnesses or evidence to refute Carrier's charges. Claimant admitted in direct testimony that he failed to protect his assignment. Claimant did call the Chief Clerk at 12 Noon, thirty minutes after the starting time of his assignment, but the testimony developed in the investigation supports Carrier's position that he merely wanted to go on record as calling at that time. He offered the Chief Clerk no excuse or reasons for being absent.

The record clearly shows claimant to be guilty of the charges. We must look to the claimant's personal record to determine if the punishment fits the crime or if it was excessive.

Claimant, as revealed by the record, was hired on September 2, 1969, and from that date until he was dismissed on March 2, 1978, he was suspended or reprimanded for absenteeism and late reporting on eleven occasions. The record further shows reprimands for failure to perform.

In view of claimant's personal record, the Board can find no justification for disturbing the Carrier's action in dismissing this employee.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

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 15th day of January 1981.

