

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23189  
Docket Number CL-22819

Joseph A. Sickles, 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-8712) that:

Carrier violated the Agreement at Atlanta, Georgia, when it suspended Mr. M. B. Postell, Clerk at Inman Yard, from the service of the Carrier beginning November 29, 1976, through December 28, 1976.

Carrier shall be required to compensate Mr. M. B. Postell at his regular rate of pay for all time lost during the period November 29 through December 28, 1976.

OPINION OF BOARD: The Claimant was scheduled to work the 7:00 a.m. to 3:00 p.m. LDX First Position on November 28, 1976. He did not arrive for work at 7:00 a.m., and the Carrier was unable to determine reasons for his failure to report, because the Employee did not have a telephone. As of 7:30 a.m., another clerk was called to work the Claimant's position. Finally, at 9:30 a.m., the Claimant called in to advise that he had overslept.

The Claimant was suspended from service for a 30-day period for his failure to protect his assignment.

In February of 1976, the Carrier had promulgated a progressive discipline memo dealing with reporting late for work, and setting forth the length of various suspensions for various offenses. Further, it "wiped clean" everyone's record as of that point in time. The Employees assert that the progressive discipline memo, itself, is improper, because of certain time limit provisions of the Agreement and even if proper, the Employees assert that the Carrier violated its own progressive discipline policy.

The Carrier denies that the progressive discipline policy for reporting late to work is at all material to this case because the Employee was disciplined - not for reporting late - but for failure to protect an assignment.

The Organization has argued that the penalty imposed was, in reality, a disciplinary action for violation of the late reporting policy, and they point to certain arguments and discussions at the investigation concerning the differences between failure to report and reporting late.

The Board will concede, of course, that in certain instances, there may be a very slight difference, indeed, and that there are only degrees involved in considering the differences in the offenses. Nonetheless, under this record, we feel that there is a sufficient basis shown for concluding that the Employee failed to protect his assignment. Certainly, when the evidence shows that a 2 and 1/2 hour period elapsed after the start of the shift before an initial contact is made, the Carrier is authorized to make appropriate presumptions.

Having established that, it was appropriate for the Carrier to review the Employee's prior record, and we cannot state that the penalty imposed was arbitrary and/or capricious. We will deny the claim.

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 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. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1981.