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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23406  
Docket Number CL-23344

Paul C. Carter, Referee

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

STATEMENT OF CLAIM: Carrier did not violate the Agreement with the Brotherhood of Railway, Airline and Steamship Clerks as alleged, when it dismissed Mr. E.L. James, Clerk, Atlanta, Georgia, from the service of the Carrier for cause on June 17, 1978.

Since the Agreement was not violated, Mr. James is not entitled to a day's pay at the proper pro rata rate for Monday, June 19, 1978, and each and every day of his 3 p.m. to 11 p.m., Monday through Friday assignment, until such time he is restored to Carrier's service with all rights unimpaired, as claimed in his behalf by the Clerks' Organization.

OPINION OF BOARD: The dispute has been submitted to the Board by the Carrier and involves the dismissal of E. L. James, who at the time of the occurrence giving rise to the dispute, was assigned as Rate and Bill clerk in Carrier's Inman Yard, at Atlanta, Georgia, with a seniority date on the Georgia Division roster of September 27, 1974. Prior to his employment at Atlanta, James was employed by the Carrier as a clerk at Louisville, Kentucky. He resigned at Louisville, effective September 20, 1974, and was employed at Atlanta.

On June 17, 1978, James was notified by the Agent:

"Working your assignment, Rate and Bill Clerk, 3 p.m., to 11 p.m., Friday, June 16, 1978 you did not promptly and properly perform your duties and you created disruption in the Office of Terminal Control by continuing to make obnoxious remarks during which time you should have been devoting your full attention to the performance of your duties.

"For your continuing lack of interest in your employment with this Carrier, for your continued bad attitude, for your continuing making obnoxious remarks and disruptions of your work and work of other clerks in the Office of Terminal Control and for your failure to promptly and properly perform your duties, your employment with the Southern Railway is terminated."

The Organization's representative requested an investigation, in accordance with the applicable agreement to determine the propriety of the assessed discipline. The investigation was held on July 6, 1978. A copy of the transcript of the investigation has been made a part of the record.

Following the investigation, the Division Superintendent, who had conducted the investigation, affirmed James' dismissal on July 7, 1978. A claim was then initiated by the Organization and progressed in the usual manner on the property in James' behalf for "a day's pay at the proper pro rata rate for Monday, June 19, 1978, and for each and every day of his 3:00 P.M. to 11:00 P.M., Monday through Friday assignment thereafter, account he was unjustly dismissed from the service of the Southern Railway Company." Failing settlement on the property, the claim was referred to this Board by the Carrier.

We have carefully reviewed the entire record, including the transcript of the investigation and find that none of James' substantive procedural rights was violated in the investigation or in the appeal on the property. It was not in violation of any rule of the Agreement to refer to claimant's past record in the formal letter of dismissal of July 7, 1978. It is always proper in discipline cases to consider an employee's past record in arriving at the discipline to be imposed for a proven offense.

The record is conclusive that James did not properly perform his duties on June 16, 1978. There is also substantial evidence that James disturbed the work of others, and that he was argumentative concerning work instructions. James' actions on June 16, 1978, clearly warranted discipline, and, coupled with his prior record, dismissal was justified. His record from the date of employment in Louisville to date of dismissal was anything but satisfactory. We consider it proper to consider his entire record while in the service of the Carrier, but if the Board only considered his record from the date that he transferred to Atlanta, which the Organization contends would be proper, the fact remains that his record during that period was terrible.

Considering the entire record before the Board, there is no proper basis for the Board to interfere with the discipline imposed by the Carrier. The claim of the Carrier will be sustained.

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;

Award Number 23406  
Docket Number CL-23344

Page 3

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

That the dismissal of E. L. James is upheld.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

*A. W. Paulose*

ATTEST:

\_\_\_\_\_  
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.