

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23474
Docket Number CL-23257

Josef P. Sirefman, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
{
(Norfolk, Franklin & Danville Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8933)
that:

1. Carrier acted in an arbitrary, capricious, unjust and discriminatory manner when, without just cause, it dismissed Agent-Operator S. A. Black, West Norfolk, Virginia, from service of the Carrier on March 5, 1979.

2. In view of such arbitrary, capricious, unjust and discriminatory action, Carrier shall now be required to:

- (a) Restore Agent-Operator S. A. Black to service of the Carrier with all seniority, vacation and other rights unimpaired.
- (b) Compensate Agent-Operator S. A. Black for all time lost commencing with March 5, 1979 and continuing until Agent-Operator S. A. Black is restored to service, less outside earnings.
- (c) Pay Agent Operator S. A. Black any amount he incurred for medical or surgical expenses for himself or dependents to the extent that such payments would have been paid by Travelers Insurance Company under Group Policy GA-23000, and in the event of death of Agent-Operator S. A. Black, the amount of life insurance provided for under said policy, in addition, reimburse him for premium payments he may have made in the provision of substitute health, welfare and life insurance.
- (d) Pay Agent-Operator S. A. Black any amount he incurred for dental expenses for himself or dependents to the extent that such payments would have been paid by Aetna Life and Casualty Company under Group Policy GA-1200, and in addition, reimburse him for premium payments he may have made in the provision of substitute dental insurance.

- (e) Pay Agent-Operator S. A. Black interest at the rate of eighteen (18) percent compounded annually on the anniversary on the claim for amounts due in Item 2(b) supra.

OPINION OF BOARD: Claimant Samuel A. Black, Agent-Operator, was served with a notice of investigation charging that he had been on paid sick leave for a significant period of time when he was physically capable of working, in violation of various rules and a Sick Leave Allowance agreement. The investigation was held on February 23, 1979 and Claimant was sent a letter of dismissal on March 5, 1979.

A review of the record before this Board establishes that the February 12, 1979 notice of investigation provided sufficient particularity to permit Claimant to properly prepare a defense for the allegations therein contained, and that Claimant was afforded all the procedures provided by the contract. There was substantial evidence to sustain the Carrier's decision to discipline Claimant for this serious infraction. However, given Claimant's long service, a May 1959 seniority date, the penalty of termination is too severe. Accordingly Claimant is to be returned to service but without any back pay and this discipline is to constitute a last chance warning.

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 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

That the discipline assessed was excessive.

A W A R D

Claim sustained in accordance with the Opinion.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.