

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23490
Docket Number CL-23492

A. Robert Lowry, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
{ Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9260) that:

1. Carrier acted arbitrarily, capriciously and in a harsh and discriminatory manner, violating Rule 38 and other rules of the Agreement, when it dismissed from the service of the Seaboard Coast Line Railroad Company, Crew Clerk Joe Lodato, Jr., Tampa, Florida, following investigation held at Tampa, Florida, December 14, 1978.

2. As a consequence of the above stated violation, Carrier shall:

- (a) Clear service record of Joe Lodato, Jr., and any reference to above stated investigation and discipline shall be cleared from record and personal file of Claimant.
- (b) Compensate Claimant for all time lost and other benefits taken from him as a result of Carrier's action. Also immediately reinstate Claimant to his position as Crew Clerk, Tampa, Florida.

OPINION OF BOARD: Mr. Joseph Lodato, Jr., the Claimant, with a seniority date of May 26, 1969, was regularly assigned Crew Clerk, third trick, with hours 11:00 P.M. to 7:00 A.M., rest days Wednesday and Thursday, in the Division Office Building, Tampa, Fla. About 9:30 P.M. on October 20, 1978, while working an extra assignment as Crew Clerk, with assigned hours 3:00 P.M. to 11:00 P.M., was allegedly found asleep at his desk resulting in failure to call the Lakeland-Tencor turn, and, on the same evening allegedly improperly marked up Trainman J. H. Scott on the Trainmen's Extra Board instead of J. E. Scott.

Claimant was charged with both offenses and originally instructed to attend two hearings but after several postponements the two separate charges were combined and heard in one hearing on December 14, 1978. Carrier by letter on January 2, 1979, dismissed Claimant from service.

A copy of the transcript of the hearing was made a part of the record. The transcript shows Claimant was accorded the right of representation, to present witnesses and to cross examine Carrier's witnesses. He was accorded a fair and impartial investigation as required by the agreement.

The transcript clearly shows Claimant as being asleep on duty as charged. The evidence developed in the hearing also shows Trainman J. H. Scott as being marked up on the Trainmen's Extra Board rather than J. E. Scott, who was subsequently paid a day's pay for the improper mark-up.

The Organization in defense contended that the Claimant was exhausted since he had worked four shifts beyond his regular assignment between the end of his regular shift, 7:00 A.M. on October 18, 1978, and his regular starting time 11:00 P.M. October 20, 1978, the day of the offenses, and for this reason he should have been given a mild reprimand. The Board finds that it is the employee's responsibility to inform his supervisor if he is not physically able to perform his duties, which Claimant failed to do. The testimony concerning the mark-up offense is confusing. Considerable argument was made that Claimant had marked-up the proper Scott and someone else had changed the middle initial. It would seem to this Board that one who claimed to have been in such an exhausted state could have very easily made such an error, and if admitted, would have very likely resulted in a simple reprimand. The evidence, however, was against the Claimant's contentions.

The Carrier proved its charges. The Board must now determine if the punishment fits the crime. While Claimant was found guilty of both charges; the two offenses, considered together, were not so serious that the Carrier's operation was in jeopardy nor was the safety of any employee involved. Claimant has suffered enough. The offenses do not warrant permanent dismissal. For these reasons the Board finds that Claimant should be restored to service with all rights unimpaired but without back pay.

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 discipline imposed was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

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Page 3

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By Order of Third Division

Attest: *A. W. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1982.

