

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24625
Docket Number CL-24800

Edward L. Suntrup, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9657),
that:

1. Carrier acted in an arbitrary, capricious and unjust manner when it suspended Clerk L. K. Hunt for twenty-five (25) days as result of investigation held on September 22, 1981, also an additional four (4) days pending investigation.

2. Carrier shall restore Claimant to service in accordance with Rule 43(c) and paid full wages for all time lost as a result of the charge.

OPINION OF BOARD: By letter dated September 19, 1981 the Claimant, L. K. Hunt, with seniority date of January 10, 1979, was notified to attend an investigation on September 22, 1981. He was charged with failing to protect his assignment as Clerk/Operator on September 18, 1981 and with failure to lay off to proper authority on that same date. The hearing was held as scheduled. Claimant then received notice dated October 8, 1981 whereby he was advised that he had been found guilty as charged and that he was assessed twenty-five (25) days actual suspension from service. After appeal by the Organization on property up to and including the highest Carrier officer designated to hear such appeals this case is now before the National Railroad Adjustment Board.

A review of the record shows sufficient substantial evidence present to indicate Carrier violation of current Agreement Rule 43(a) which reads, in pertinent part: "(I)f the offense is considered sufficiently serious the employee may be suspended during the interim (i.e. between the notification of alleged offense and the hearing itself)". The alleged offense at bar was not of a sufficiently serious nature to meet the test of the Agreement Rule cited above. The Organization errs, however, in its request for four (4) days compensation for the Claimant with respect to this Rule violation since two (2) of the four (4) days in question were assigned off days. The Board rules, therefore, that the Claimant be compensated for only the day of September 19, 1981 when he was incorrectly advised by Senior Agent W. L. Jacks "... not (to) work Sylacauga on this date ...", and additionally for any compensation time lost on the day of September 22, 1981 which was the date of the hearing. The Claimant is not to be compensated for the days of September 20 and 21, 1981 since these were the assigned off days in question.

With respect to the merits of the case the Board finds sufficient substantial evidence present to warrant conclusion that the Claimant is guilty as charged. The Claimant had bid on the position of Clerk/Operator No. 152 and was awarded such on September 2, 1981. He was training for this position at the time of the incident at bar; he was being compensated at full rate; and he was fully covered by the requirements of Terminal Superintendent A. W. Pugh's letter of instructions dated July 10, 1981 which stipulated, among other things, that "... (w)hile an employee is in training status and is being compensated by the Carrier, he is bound by the rules regarding laying off as all other employees."

Someone was available at the Division Headquarters yard office twenty-four (24) hours a day in the event that an employee needed to mark off because of an emergency. At no time was this denied by the Organization in the record. Further, when the Claimant was asked, in hearing, if he had attempted to contact Senior Agent W. L. Jacks, he replied that he "didn't think about trying to get him". A Carrier cannot operate in an efficient, productive manner if it cannot depend on knowledge of the whereabouts of its employees. Employees, in turn, have the responsibility to either cover their assignments, or to mark off according to operative Rules. The Claimant clearly did not do the latter. Since such is the case there is no basis for judging the discipline assessed by the Carrier as unreasonable, arbitrary or capricious and the Board will not disturb the Carrier's determination in this matter.

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 Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.

