

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26467
Docket Number CL-26978

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10065) that:

(a) Carrier violated the Clerks' Agreement at Topeka, Kansas when it removed Richard L. Parker from its service as result of investigation held on October 5, 1984, and

(b) Richard L. Parker shall now be reinstated to Carrier service with all rights unimpaired and compensated for all time lost, and

(c) In addition to the moneys claimed, Richard L. Parker shall now receive twelve (12) per cent interest on moneys claimed. Such interest is to be compounded each and every payday from the date of removal from service forward until Claimant is reinstated and his compensation for time lost is received."

OPINION OF BOARD: The record shows that at the time of the occurrence giving rise to the dispute herein, Claimant was the assigned occupant of Storehelper Position No. 6120, at Topeka, Kansas. Following a rather lengthy Investigation conducted on October 5, 1984, Claimant was dismissed from service on October 23, 1984, for violation of Rules 2, 14, and 16 of Carrier's General Rules for the Guidance of Employees. The Rules read:

Rule 2

"Employees must be conversant with and obey the Company's rules and special instructions. If an employee is in doubt, or does not know the meaning of any rule or instruction, he should promptly ask his supervisor for an explanation. A copy of Form 2626 Std. is furnished each employee to be retained by him for his guidance."

Rule 14

"Employees must obey instructions from the proper authority in matters pertaining to their respective branches of the service. They must not withhold information, or fail to give all the facts, regarding irregularities, accidents, personal injuries or rule violations."

Rule 16

"Employees must not be careless of the safety of themselves, or others; they must remain alert and attentive and plan their work to avoid injury.

Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious.

Employees must conduct themselves in a manner that will not bring discredit on their fellow employees or subject the company to criticism or loss of goodwill."

A copy of the Transcript of the Investigation conducted on October 5, 1984, has been made a part of the record. Upon review we find that none of Claimant's Agreement rights was violated. While the record shows some rather strong give and take between the Conducting Officer, the Claimant and Claimant's Organization representatives, we do not find that Claimant was deprived of his substantive rights. The Carrier acted properly in not permitting the outside Attorney to participate in the Investigation. (See Third Division Award Nos. 24998, 24999, and 25000; Second Division Award Nos. 11124, 6381.)

The charge against the Claimant alleged insubordination on his part during a meeting in the office of the Assistant General Manager of Materials - Systems, at approximately 2:30 P.M., August 6, 1984.

Substantial evidence was adduced in the Investigation, including Claimant's statement, in support of the charge that Claimant was insubordinate to a superior officer on August 6, 1984. Severe discipline was warranted. However, under the circumstances involved, we find that permanent dismissal was excessive. We will sustain the Claim to the extent of awarding that Claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of service.

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;

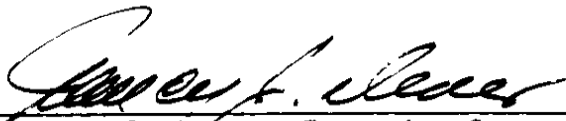
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.