

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE ALTON RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of William Hawks, Lincoln, Ill., for three days pay, February 21st, 22nd and 23rd, 1938."

JOINT STATEMENT OF FACTS: "On February 21st, 1938, Baggage-man Wm. Hawks, holding a regular assigned position at Lincoln, Ill., reported for work at his regular starting time, 7:00 A. M., but was not permitted to go to work, because of alleged insubordination. He was advised by the Superintendent to appear for hearing on February 23rd, 1938, at the passenger station at Lincoln, and did not work on February 21st, 22nd and 23rd, 1938. He was placed back on his position on February 24th, 1938, and hearing was held on March 15th, 1938. Mr. Hawks entered service on June 16th, 1937. Rule No. 28, Clerks' Agreement, reads as follows:

'An employe who has been in the service more than sixty (60) days will not be disciplined or dismissed before being given a hearing.

'Should an employe be dissatisfied with a decision he shall have the right within ten (10) days to refer the case with written statements to the next higher officer and same will be investigated within ten days of such notice with the aggrieved employe with any other employe of his choice present. Appeal may be successively taken to the highest official designated by the Management to handle such cases.

'In case penalty is inflicted and found to be unjust the employe shall, if suspended or dismissed, be reinstated and paid for all time lost.

'No appeal shall be allowed unless made within the time prescribed in this article.

'An employe on request will be given a letter stating the cause of discipline. A copy of all statements made a matter of record at the investigation or on the appeal will be furnished on request to the employe or his representative.

'All service cards, letters of recommendation, or other papers furnished by the employe making application for employment shall be returned to him within thirty (30) days after approval of such application, which application shall be either approved or disapproved within sixty (60) days after applicant begins work.

"The Carrier understands that this is a test case, submitted by the Employees for the purpose of having Discipline Rule No. 28 interpreted as prohibiting taking employees out of service, with consequent loss of pay, pending hearing.

"It is the Carrier's position that it was within its rights in removing Mr. Hawks from service pending investigation; that the investigation proved he was guilty of the charges made against him, and that his removal from service pending investigation was not contrary to the discipline rule in the Clerks' schedule.

"Therefore, the claim of the employees should be denied."

There is in evidence an agreement between the parties bearing effective date of August 1, 1930.

OPINION OF BOARD: The facts, the rule involved, and the views of the parties in relation thereto, are fully set forth and developed above. Briefly, the claimant was insubordinate, as we think the evidence fairly indicates, and as was the determination of the carrier official who heard the evidence and passed upon the question. At the time of the insubordination, February 21, 1938, claimant's superior suspended him from service and ordered him to appear for hearing February 23, 1938. Claimant was out of service February 21, 22, 23, but, and pending hearing, he was restored to his position, effective February 24, and thenceforth enjoyed employment as theretofore. Formal hearing in relation to his conduct, mutually postponed from time to time, was held March 15, 1938. Noting claimant's age—only twenty—and sensing that likely the importance of observing the orders of his superior in the service was not fully appreciated by the young man, the carrier official, other than voicing a warning, kindly worded, to the effect that claimant must recognize the authority of the agent in charge at the station where the incident occurred, criticism was withheld and he was continued in the service.

In behalf of claimant, the contention is that the first paragraph of rule 28 of the applicable working agreement was violated when claimant was suspended, and that the violation continued for three days, contrary to the rule. The paragraph relied on reads:

"An employe who has been in the service more than sixty (60) days will not be disciplined or dismissed before being given a hearing."

Claimant had been in service since June, 1937, or more than sixty days.

We do not interpret the rule as does the representative of the claimant. In contemplation of the rule, as we perceive, claimant was neither disciplined nor dismissed from the service. His insubordination was of such character that his superior was bound to note and act upon it immediately. An early hearing was ordered, and, by an intervening order, and pending the hearing, claimant was restored to the service after only three days of separation from it. In the circumstances, as we think, not only the dignity of claimant's superior required the action taken, but such step conformed to the public welfare. In complex organizations, such as rail carriers, functioning in the public interest, as is the requirement in these latter days, authority to direct movements by the carrier is necessarily vested in those of controlling authority. That theory not only works to efficiency in operation, but any failure of the service in the interest of the public must be chargeable to those in authority. The insubordination here, as we have already stated, was immediate and the superior in authority at the scene was faced with the problem of a decision.

On the whole, we are of the view that the order was reasonable and temperate, and that the final decision of the official higher in authority than those engaged in the disagreement, was equitable, considerate and just. We think there was no violation of the rule involved.

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 employe involved in this dispute are respectively carrier and employe 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 carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of December, 1940.