

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul W. Richards, Referee

PARTIES TO DISPUTE:

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

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: "Claim of the System Board of Adjustment, that

"1—The Central Railroad Company of New Jersey violated Rule 48, Sections (a), (b), and (f), when imposing discipline on William W. Vanderhoof, Ferry Collector and Extra Ferry Master;

"2—The service record shows the cause of dismissal to be based upon other than the precise charge against him;

"3—The dismissal action is unwarranted;

"4—Ferry Collector Vanderhoof be compensated for loss of earnings from March 4, 1940, to date of adjustment and returned to work as a Ferry Collector."

EMPLOYEES' STATEMENT OF FACTS: "Ferry Collector and Extra Ferry Master William W. Vanderhoof was on February 22, 1940, apprised in writing of the following charge:

'Jersey City, N. J.
February 22, 1940.

Mr. Ward Vanderhoof,
Ferry Collector.

Dear Sir:

You will please arrange to be present at the office of Manager, Marine Department, Pier 11, New York, at 9:00 A. M., Friday, February 23rd, for hearing and investigation in connection with irregularities in the handling of Ferry Tickets and Cash Collections at the Jersey City Ferry Terminal, C. R. R. of N. J.

F. McIntire,
Manager.'

"The investigation was started on February 23, 1940, in accordance with the charge, and continued through supplementary testimony on March 5, 1940. Form 327, reading as follows, was served upon Mr. Vanderhoof by Assistant Superintendent E. T. Moore, due to the absence of the General Superintendent, on March 20, 1940:

intendent Godman in the early morning of Febr. 22nd without coercion or dictation, the entire statement being his own thought and words. Between then and February 23rd, date of first hearing, and March 5th supplementary hearing, he had full opportunity to avail himself of advice from and consult with his representative, as to his procedure and defense to be offered at those hearings, and his attempted explanation of what he meant by his statement as to holding out Company funds daily, can receive little credence from this Carrier nor can it justly be taken by the Board as offsetting his first plain statement of facts. In the light of the foregoing, the Carrier contends that its action in dismissing Vanderhoof was fully warranted.

"Item No. 4:

"The Carrier understands that this is a request that the Board set aside the dismissal of Collector Vanderhoof from the service of the Carrier, order his reinstatement in its service as a Ferry Collector, and compensate him for 'loss of earnings' from March 4th, 1940 until he is so reinstated.

"To the Carrier it is inconceivable that such request can be sustained by your Board. To do so would require the Carrier to take back into its service a self-confessed thief; not only that, but also to again place him in a position where the daily handling of the Company's funds is required. In view of the facts, such action is entirely unwarranted and unjustifiable; noting that the Board can only sustain this claim if, under the wording of Rule No. 48, paragraph (a), it is convinced that Vanderhoof was entirely blameless. The dictionary defines the word 'blameless' as 'free from fault or wrongdoing; guiltless.' Certainly Vanderhoof was anything but free from fault or wrongdoing, according to his own statement and testimony at the hearing. Hence this claim should be denied.

"While so holding, the Carrier further feels that should the Board sustain the claim that it should be expressly stipulated that any money payment (if awarded) shall in no case exceed the amount the employe would have earned on his regular assignment less any and all amounts he earned in any other employment during the period he was out of Carrier's service; such handling being in accord with your Board's decisions in many awards and also in accordance with the General Chairman of the Brotherhood of Railway and Steamship Clerks and the undersigned's agreement as to interpretation of 'wage loss' as used in Rule No. 48 of the effective agreement."

OPINION OF BOARD: Claimant was requested to appear for hearing and investigation "in connection with irregularities in the handling of Ferry Tickets and Cash Collections at the Jersey City Ferry Terminal, C. R. R. of N. J." As the outcome of this hearing and investigation claimant was discharged from service.

At the outset it is urged by Carrier that this dispute is not properly before the Board because of an alleged failure of Petitioner to progress the appeal from each one of Carrier's officials to that official's superior, resulting in one of the intermediate officials not reviewing the dispute. In the opinion of the Board, this position is not well taken, one reason being that the dispute was progressed in the only reasonably possible manner left open to Petitioner after the Carrier granted a leave of absence to the intermediate official, and was progressed consistently with the setup the Carrier arranged while that official was absent.

Turning now to the claim, it cannot be contended that there is no evidence to sustain the charge. On the contrary, repeated violations of the Carrier's rules, known to claimant, were admitted by him in his testimony. It may be said, however, in claimant's favor, that reasonable minds might reach contrary conclusions as to there having been certain other irregularities, quite unexcusable in character. In a writing that claimant made and signed is a statement that is undoubtedly susceptible of being interpreted as an admission that these irregularities had been an almost daily practice on his part

over a period of years. Afterwards, as a witness on the hearing, he offered explanations of what he meant in this written statement, and it would appear that had the explanations been incorporated originally in the writing, these irregularities would have been of comparatively insignificant importance. It is as to where the truth lies in this conflict of evidence that reasonable minds might differ. In such a situation it was the province of the Carrier, if acting in conformity with the agreement and not unfairly or arbitrarily or in abuse of its discretion, to resolve that question of fact. The Carrier resolved the question, and did not accept the claimant's explanations. The conclusion is that it does not appear on the record that the dismissal action was unwarranted, when using as the only criterion the sufficiency of the evidence, which leaves, however, for further consideration (1) of statement of claim to the effect that there was in the proceedings a violation of Rule 48 (a), (b), and (f), and (2) of statement of claim to the effect that the cause of dismissal was other than the precise charge made against claimant.

First taking up (2) of statement of claim, Petitioner cites from Rule 48 (a) a provision that prior to the hearing an employe is entitled to be apprised in writing of the precise charge against him. In the dismissal of claimant the Carrier stated "cause" as follows:

1. Deserting his assignment before scheduled expiration of tour of duty while acting as Night Ferrymaster.
2. Deserting his assignment before scheduled expiration while employed as Ferry Collector.
3. Violation of instructions in the handling of Ferry Transportation.

It is Petitioner's contention that above numbered causes 1 and 2 constituted a violation of the cited provision in Rule 48 (a), in that in dismissing claimant the Carrier allegedly went outside the "precise charge" of which claimant had been apprised. This is tantamount to arguing that deserting for periods of time, without authority to do so, the duty of handling tickets and cash collections and the duty when Ferrymaster to exercise supervision of the operation, was not an irregularity in the performing of those duties. It seems to the Board that clearly it was an irregularity, and not something extraneous to the subject matter to be investigated at the hearing under the terms of the request to appear given claimant. These absences were not matters of which claimant did not know, for he admitted during the investigation that he left his post of duty for hours at a time on many occasions, and the record compels the conclusion that this was without authority from his superior, in at least numerous instances. It is the opinion of the Board that claimant was apprised of all the rules contemplated and was dismissed on the precise charge against him within the intendment of the rule.

Petitioner complains of a lack of opportunity to cross-examine an employe who also was being investigated at the same time. But under all the circumstances in this case the Board is of the opinion that the evidence that was adduced by the Carrier was not such as to detract from the fairness and impartiality of the hearing, even in the absence of such cross-examination. Some of the things given consideration, in stating such opinion are these: When claimant made known his desire to cross-examine, the witness had left the place of the hearing. Whether claimant expressed his desire as a mere state of mind, or in such manner that it should have been interpreted by Carrier as a request that the witness be brought back, is nebulous so far as the record shows. But however that may be, before the witness left the hearing, he had already been given by the Carrier's representative a severe questioning on the very subject matter to which claimant's cross-examination would have been directed, namely whether this employe had taken coupons from claimant's desk or clothing or had planted them in various places. All this the employe had vigorously denied. And, as a matter of fact, in the taking or planting of the coupons by the employe, had that been shown, we are unable to see anything that would have constituted

a defense to the irregularities the claimant admitted, or to those as to which the evidence was controversial, nor are there any other irregularities in the record as to which the conduct of the other employe would have been material.

Rule 48 (a) contains this: "A decision in writing shall be rendered within ten (10) days to the employe, * * * and if found blameless shall be compensated for wage loss, if any, suffered by him and his record cleared of the charge." Petitioner, pointing out that the hearing extended through March 5, 1940, and that the decision was not made until March 19, 1940, takes the position the claim should be sustained because of this violation of the rule by the Carrier. Had the Carrier's non-compliance with its agreed undertakings violated Claimant's right to a full, fair and impartial trial and a fair and impartial decision, support for Petitioner's proposition could be found in prior awards. But no such or other injury to claimant is shown or claimed, so that there is nothing for which a compensating is due claimant. True, an award sustaining the claim would effect a penalizing of the Carrier for its violation of the rule. But in Award No. 1497, of this Division, rendered in a case in which a similar rule had been violated by the Carrier without prejudice to the rights of the employe-claimant, the Board, speaking through Judge Thaxter, Referee, suggested that discipline is not simply a matter that concerns the employe and the Carrier, but involves as well the interest of the traveling public, to insure whose safety it is the duty of the carrier to take measures to prevent negligent actions by employes. Quite clearly, the claimant not having been prejudiced by the Carrier's violation of the rule, the element of public safety became a controlling consideration that led to the denial of the claim in Award No. 1497. Though in the instant case negligence directly endangering the public was not charged, yet in the functioning of common carriers, the public's interest is not limited to personal safety. Its contacts usually being with the carrier's employes, the honesty of the latter is not beyond the pale of the public's interest. In the opinion of the Board, the principle applied in Award No. 1497 must be deemed likewise controlling in view of the facts and circumstances in the instant case, rendering it necessary that the claim be denied, despite the Carrier's violation of Rule 48 (a).

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, for the reasons set out in the Opinion, the record in this docket does not warrant an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of July, 1941.