

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

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

**THE ALABAMA GREAT SOUTHERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that Mr. I. W. Peebles, Rate and Route Clerk, Meridian, Mississippi, shall now be reinstated with seniority rights unimpaired and be reimbursed for wage loss suffered retroactive to May 16, 1941, on which date he was dismissed for alleged unsatisfactory service in utilizing information obtained from a waybill covering the movement of a car of freight resulting in same being garnisheed to satisfy a court judgment he had against the consignee.

OPINION OF BOARD: On August 3, 1913 I. W. Peebles entered service as a clerk and his name appeared on the first seniority list in April of 1918. He held seniority for approximately 28 years in the Alabama Great Southern Railroad Company. The circumstances leading up to his dismissal were substantially as follows:

In March of 1941 Mr. Peebles had a judgment against one J. L. Hailey which he was unable to collect, and on the 3rd day of that month a carload of valuable freight consigned to this J. L. Hailey came into the yard where Mr. Peebles was acting as Rate and Route Clerk. The waybill came to his attention, he immediately informed his attorney of the fact and the contents of the car were attached for Mr. Peebles' benefit and on his judgment. Hailey was able to prove that the contents of the car did not belong to him and it was subsequently released, yet he nevertheless complained to the Carrier of the misuse by Mr. Peebles, for his own advantage, of information that came to him as an employe of the Carrier.

Paragraphs 11 and 12 of Section 16 of the Interstate Commerce Act make it a misdemeanor, subject to a fine of anything up to \$1,000 for any employe of a common carrier to knowingly disclose or permit to be disclosed, without the consent of the shipper or consignee, any information which may be used to the detriment or prejudice of the shipper or consignee. Mr. Peebles claimed that he was not aware of this law, but ignorance of the law excuses no one and he is presumed to have known it. In any event after 28 years of railroad service he must have known that it would be considered at least unethical to use information obtained in the course of his employment for his own personal benefit and to the detriment of a patron of the Company.

Mr. Peebles testified concerning this matter under oath in court at a trial of the right of property when the car was released. He also testified at his discipline hearing, and without discussing the details of testimony it is enough to point out for the purposes of this award that his testimony was contradictory, evasive, and in many respects untrue. It is entirely probable that his attitude and untruthfulness had as much to do with the severity of his punishment as his actual misconduct with which he was charged. At any rate he was

discharged from the service and the appeal to this Board has followed the usual procedure.

We are convinced that Mr. Peebles was found guilty of wrongful conduct beyond any reasonable doubt, even by his own testimony. There is no question but that he should have been disciplined. The only question which causes us concern is as to the extent of the discipline under all of the facts and surrounding circumstances in this particular case. Under the Interstate Commerce Act it was the considered judgment of the Congress of the United States that Mr. Peebles would be considered guilty of a misdemeanor and might be fined anything up to \$1,000. Peebles has now been out of service approximately a year and a half and his loss of pay must now amount to more than \$3,000, or three times the maximum penalty provided by Congress for the same identical offense. More important however is the fact that Mr. Peebles has approximately 28 years seniority rights and is now about 60 years old. We know as a matter of general information and common knowledge that at the age of 60 it will be impossible for him to obtain other lucrative employment, and it is entirely improbable that he knows anything else but railroad clerking. The effect of the discipline has therefore been extremely harsh. His conduct neither can be mitigated nor condoned, but we may possibly understand his motives realizing that he had a judgment which he could not collect because his judgment debtor appears to have been covered up under some corporate form. This is pointed out not by way of mitigating but merely in an effort to understand the attitude and motives of Mr. Peebles in taking this unethical and unlawful method of trying to collect. We also take notice of the fact that the Superintendent was probably angered by and disgusted with Mr. Peebles rather obvious effort to avoid the issue and to indulge in excuses and untrue statements to protect himself from this charge.

In considering the circumstances above pointed out in connection with the 28 years of good service and the age of Mr. Peebles, we believe the punishment was unreasonable and unjustly harsh in this particular case. It appears to us to have been imposed more in anger and disgust than by a judicious weighing of the consequences, balancing the nature of the offense against the consequences of the punishment to the employe. It appears to us to be bordering on the capricious and revengeful for a life time of service to be destroyed without further employment for a single act in that life time, which at the most was a misdemeanor. As above pointed out the monetary loss to Mr. Peebles already amounts to more than three times the penalty imposed by Congress for the same act and we think he has been punished enough.

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 Peebles should be restored to service with his former seniority date but without back pay.

AWARD

That I. W. Peebles be restored to service with his former seniority date but without back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1942.