Award No. 2339
Docket No. CL-2423

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

Scott M. Loftin and John W. Martin, Trustees.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the provisions of Rule 29 of the Clerks' Agreement by assessing record of Yard Clerk-Caller F. W. Wilson, Buena Vista, Florida, with a reprimand without affording him an investigation and hearing as contemplated by the aforementioned rule.

OPINION OF BOARD: Petitioner claims that the Carrier violated the Clerks' Agreement in assessing the record of Yard Clerk-Caller F. W. Wilson with a reprimand without affording him an investigation and hearing.

The record shows that on September 4, 1942, Conductor W. H. Young was called out of turn by Wilson, thus running around Conductor T. M. Moore, who claimed and was paid a run-around. In response to a request for an explanation as to how the run-around occurred, Wilson answered in part as follows: "I do not feel that I am entirely responsible, but I shall accept full responsibility and waive formal investigation." The Carrier thereupon assessed Wilson's efficiency record with a reprimand. Under the system of discipline in effect, the reprimand was cancelled at the end of the following three months. It is not contended that Wilson did not commit the offense or that the assessment of the reprimand was not a fair measure of discipline. The sole question is whether Wilson was entitled to an investigation and hearing irrespective of his acknowledgment of responsibility and waiver of formal investigation.

The evidence is clear that Wilson knew the precise offense with which he was charged. There is nothing shown to indicate that his acknowledgment of responsibility was the result of coercion, fraud or mistake; in fact, it appears to have been wholly voluntary. No effort is made to show that Wilson has been in any wise prejudiced by the procedural methods employed in assessing the reprimand. It is nowhere pointed out how the result could have been any different if an investigation and hearing had been held with all the meticulous formalities known to the law. It is a case where demand is made for the application of a remedy to correct a wrong which is not shown to exist. An appeal to this Board under such circumstances is frivolous and the question posed is moot.

It is true that Rule 29 of the Clerks' Agreement provides that an employe shall not be disciplined or dismissed without investigation and hearing. He has the right under this rule to attend the hearing, to produce his witnesses

and to have the assistance of a representative, but can it be said that he cannot decline to exercise any or all of such rights without nullifying the proceeding? Likewise, he has the right under the Agreement to an investigation and hearing, but if he knows that he has committed the offense charged, can it be said that he cannot voluntarily decline the benefits of the provision to save time, avoid expense and eliminate the tension and uncertainty usually incidental to matters of this kind? We think these questions require a negative anaswer. Where an employe voluntarily acknowledges the commission of an offense charged and is assessed a measure of discipline which is fair in relation to the offense committed, any irregularities in the procedure cannot be said to be prejudicial to the rights of the employe, and at most constitute harmless error. This holding is in line with Awards No. 929 and 1823.

The Awards cited by petitioner support the principle that rules, rates of pay, working conditions incorporated into a collective agreement, penalty provisions, etc., cannot be waived or abrogated by the individual action of an employe who is within the scope of the Agreement. We have no fault to find with the reasoning which supports these holdings, but they have no application to the question before us. The provisions of Rule 29 presuppose the necessity for determining the guilt or innocence of the employe charged with an offense. It does not contemplate an investigation and hearing when there is no issuable fact in dispute. An employe's voluntary acknowledgment of responsibility for the offense charged eliminates the necessity for the technical application of the rule.

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 employes involved in this dispute are respectively carrier and employes 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 assessment of a reprimand on the efficiency record of an employe, without investigation and hearing, is not violative of Rule 29 of the Clerks' Agreement where it appears that such employe in writing voluntarily acknowledged his responsibility for the offense charged and waived investigation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1943.