

**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**

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood on Lehigh Valley Railroad Company:

1. That Joseph A. McHale, Crew Dispatcher at Coxton, Pa. was improperly dismissed from service May 26, 1943 as an undesirable employe account of alleged misconduct on the night of December 3-4, 1942, first charged against him April 30, 1943, and not sustained by the evidence; which dismissal is in violation of our Agreement.

2. That Joseph A. McHale be reinstated to service, his record cleared, and that he be reimbursed in full for all monetary loss as the result of this arbitrary and illegal action of the Carrier.

OPINION OF BOARD: On May 26, 1943, Joseph A. McHale, Crew Dispatcher at Coxton, Pa., was dismissed from the service as an undesirable employe on account of misconduct on the night of December 3-4, 1942. The Clerks' Organization claims that the dismissal constituted a violation of the current Agreement and brings the matter here for the consideration of this Board.

The record shows that McHale was charged with approaching Yardmasters Engleman and Hontz on separate occasions on the night of December 3, 1942, and requested each of them not to assist or show relief Yardmaster Dougherty, who was working in place of Yardmaster Whalen, anything concerning the operation or work in Coxton Yard in so far as yardmaster's work was concerned. At the investigation, McHale frankly admitted that he made the statements as charged. We are obliged to say, therefore, that the Carrier was amply justified in finding McHale guilty of the offense. In this respect we desire to point out that a Carrier has the right to expect absolute loyalty and full cooperation from its employes, otherwise the interests of the Carrier are jeopardized and the public interest is not subserved. An employe who fails to fulfill his fundamental obligations to his employer subjects himself to disciplinary action.

The employe in the present case attempts to justify his action by showing that it was done in the heat of anger and without any intention of interfering with the best interests of the Carrier. While this is not a defense, it can properly be shown in mitigation of the gravity of the offense and the severity of the discipline to be imposed.

The record shows that McHale had been employed on the Lehigh Valley Railroad for more than 29 years with a record that was absolutely clear over that period of time. Since 1934, McHale has been an officer of the Brotherhood's General Committee, being Vice Chairman at the time the offense was committed. It is also shown that he had been engaged in negotiating agreements with the Carrier, he being a signatory to the current Agreement, and in handling claims based on violations of the current Agreement. While the record does not show that this created any prejudice or bias against him on the part of the Carrier, it is a circumstance to be considered in gaining a correct perspective of the whole dispute.

The origin of the difficulty seems to have arisen out of the use of Yard Clerk Dougherty as an extra Yardmaster. It was the practice of the General Yardmaster to use Yard Clerks as extra Yardmasters. It appears that Dougherty was junior to qualified senior Yard Clerks who were not used. McHale, in his capacity as a representative of the Brotherhood, protested the action of the General Yardmaster in using Dougherty in preference to Yard Clerks senior to him. As a result, Superintendent Mitten advised McHale that Yard Clerks would thereafter be used as extra Yardmasters in accordance with their seniority. Irrespective of the Superintendent's directions, the General Yardmaster persisted in using Dougherty, a junior man. On the night of December 3, 1942, at the time the offense charged was committed, Dougherty was being used as an extra Yardmaster in violation of the Superintendent's orders. It was quite evident that McHale was exasperated by the persistence of the General Yardmaster in favoring Dougherty and that this was the motivating cause of his making the statements which are the basis of the charge against him. While it is true that a proper method of handling violations of the current Agreement was provided and with which McHale was thoroughly familiar, we can understand that statements of the character here made, resulting from anger or irritability, often appear to be more serious than intended at the time. After considering all the facts and the attendant circumstances, we cannot believe that McHale, in the exercise of judgment and deliberation, intended all of the evil results which the Carrier charges. It is evident that McHale had devoted the greater share of his life to railroading and that he has intended it as his life work. The chances are that he is familiar with no other trade or profession. A dismissal from the service is therefore a very harsh punishment.

We realize fully the problems with which a Carrier must contend in maintaining discipline among its employees, and where the guilt of an employee has been established this Board will not ordinarily interfere with the discipline meted out if it is within the maximum of the punishment which could reasonably be assessed. But the dismissal from the service here imposed by the Carrier is out of all proportion to the gravity of the offense. While we do not condone the action of McHale in making the statements which he admits he made, we cannot agree that the Carrier was acting within the maximum limits of a reasonable exercise of judgment when it dismissed him from the service. We think that three months' suspension from service would be the maximum which the Carrier could properly assess in view of all the facts and circumstances shown in the present case. We therefore direct that McHale be reinstated as of August 26, 1943, with seniority rights restored. We think he is entitled to be compensated for time lost after August 26, 1943, such loss being due solely to the unreasonable and excessive discipline assessed by the Carrier.

Other claimed violations of the rules are found to be without merit.

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 employee involved in this dispute are respectively carrier and employee 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 employe McHale was properly found guilty of the offense charged; that the penalty imposed was excessive, it not being commensurate with the nature of the offense.

AWARD

Employe McHale will be reinstated as of August 26, 1943, with all seniority rights restored, and compensated for time lost after that date.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of March, 1944.