

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

**CHARLESTON AND WESTERN CAROLINA RAILWAY
COMPANY**

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement of September 24, 1926, Amended November 1, 1943, when, without investigation and hearing it unilaterally and arbitrarily dismissed Steno-clerk Mrs. Frances M. Johnson, Greenville, S. C. Agency from its service, and that therefore,

(2) Steno-clerk Mrs. Frances M. Johnson shall now be restored to her position with seniority unaffected; her record cleared of all charges, and be compensated for all wage loss suffered retroactive to October 12, 1945, effective date of her removal from the Company's service.

OPINION OF BOARD: This is a discipline case. The main question for this Board to decide is: Was Claimant given an investigation as contemplated by Rule 30 of the current agreement. That Rule reads:

"RULE 30—INVESTIGATION. An employe who has been in the service more than sixty (60) days or whose application has been formally approved shall not be disciplined or dismissed without investigation, at which investigation he may be represented by an employe of his choice. He may, however, be held out of service pending such investigation. The investigation shall be held within seven (7) days of the date when charged with the offense or held from the service. A decision will be rendered within seven (7) days after the completion of the investigation."

The Claimant was employed as a Stenographer-Clerk under the jurisdiction of J. W. Flowers, Agent, Greenville, South Carolina. She had seniority of seventeen years and this seniority was confined to the Agency at Greenville. On October 11, 1945, Agent Flowers, at the close of work that day, handed Claimant a letter which read as follows:

"Dear Madam:

Confirming conversation Mr. Oliver had with you in my office this date, this is to advise that with the close of work today you are being held out of the service "for 'attitude prejudicial to the best interest of the company (C&WC Rwy Co.)'".

Investigation will be held in my office 11:30 A. M. Thursday, October 18, 1945."

The record shows that on October 18, 1945, at the appointed time and place, Assistant Superintendent Oliver appeared at Greenville to conduct the investigation of the Claimant. There were also present Trainmaster Tedards, Agent Flowers and three Clerks employed in the Agent's office at Greenville. Neither the Claimant nor her representative appeared and at 3:00 P. M. of that date an informal investigation was held in Claimant's absence. On October 22, 1945, Assistant Superintendent Oliver wrote Claimant as follows.

"Dear Mrs. Johnson:

Referring to my conversation with you in our Agent's office at Greenville on the afternoon of October 11, and Mr. Flowers' letter to you of that date, which letter he personally delivered you, in which you were advised you were being held out of service effective at the close of work that day for 'attitude prejudicial to the best interest of the company (C&WC Rwy. Co.)', and that investigation would be held in the Agent's office 11:30 a.m., Thursday, October 18, 1945:

Neither were you present for the investigation, nor have you requested its postponement. Therefore, in so far as we are concerned, the case is closed and you will remain out of the service.

Yours very truly,

/s/ M. B. Oliver
Assistant Superintendent."

The purpose of Rule 30 and similar rules is "that the employe shall be afforded an opportunity to meet any accusation of dereliction in duty by offering testimony." Award No. 325. But when the carrier gives an employe a written notice, stating the charge against the employe and stating the date and place where the investigation is to be held, it is the duty of that employe to be present at that hearing. It is analogous to when a person is lawfully summoned into court to answer a law suit brought by the plaintiff. In that instance it is the duty of the person so summoned to appear in court on the day named in the summons and make defense against plaintiff's cause of action, if he does not so appear the plaintiff may take a default judgment against him.

In the claim before us, General Chairman Clegg contends that on October 16, 1945, he phoned General Manager R. W. Marye and asked for a postponement of the investigation because Claimant was ill and also that he had other engagements, and Mr. Clegg states in effect that Mr. Marye agreed to set a new date and that Claimant would be informed of the new date. However, this is denied by the Carrier. The Carrier admits that Mr. Clegg did phone Mr. Marye, but all he asked was to know the time the investigation was to be held. Several of the Carrier's employes made statements to that effect. In effect, there are affidavits in this docket by Carrier's employes substantiating the Carrier's contention.

From this state of the record it is difficult for this Board to determine the real facts about the postponement, especially since this record shows that on November 7, 1945, Mr. Marye offered the Claimant another formal investigation and she stated that she did not desire any investigation, but wanted Mr. Marye to make a personal investigation. Also, there is a statement by an employe of the Carrier that Claimant was seen on the streets of Greenville on the date this investigation was set for hearing.

Had this been a suit in court under the facts shown in this record, no doubt most courts would have set aside the default judgment and granted a new trial, so that no injustice would be done either party.

So it seems to this Referee that justice will prevail if this claim is remanded, and a new date set for the investigation that will be agreeable to both parties, and a hearing be held in accordance with Rule 30 on the charges named in the letter dated October 11, 1945.

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 Employees involved in this dispute are respectively carrier and employees 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 claim be remanded and a new date set for the investigation in accordance with the Opinion.

AWARD

That the claim be remanded and a new date set for the investigation in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of December, 1946.