

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That the carrier violated Rule 28 of the agreement effective February 16, 1944 on November 27, 1946 when it dismissed Laura Mason and Alma Holmes, Cleaners General Office Building, Wilmington, N. C., without investigation.

2. That Laura Mason and Alma Holmes shall be returned to work with their original seniority and paid for all time lost.

OPINION OF BOARD: The claim presented is based on the failure of Carrier to hold an investigation as required by the agreement before it summarily dismissed Claimants. The merits of the dismissals are not before us. The conduct of Claimants, the verity of the charges against them, and the right of Carrier to dismiss them after an investigation held pursuant to the rules, are questions which are not here for consideration. Certainly we may not determine those matters in this decision.

The sole question we have for decision is Carrier's right under the rules to dismiss an employe without first holding an investigation. We find that the Agreement expressly requires that before an employe may be dismissed he must first be accorded an investigation at which he may have a representative if he chooses.

Rule 28 states:

"Rule 28. 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 or duly accredited representatives. He may, however, be held out of service pending such investigation. He shall, upon request, have not to exceed five (5) days advance notice of such investigation and be apprised in writing of the charges against him. The investigation shall be held within ten (10) days of the date when charged with the offense or held from service. A decision will be rendered within 10 days after the completion of investigation."

It is clear that the purpose of the rule is to prevent a summary dismissal when emotions are inflamed, anger aroused, and vengeance a compelling factor. Instead, although an employe may be held out of service pending an investigation, yet before a dismissal is authorized, an investigation or hearing

must be accorded the employee, wherein an orderly and fair trial under conditions which are calm and unbiased is had.

Claimants were cleaners in the Carrier's general office building at Wilmington, N. C. working from 8:00 P.M. to 4:30 A.M. Because of alleged misconduct on the night of November 27, 1946 their immediate superior, the night janitor, then and there dismissed them during their working hours. Inasmuch as the rules permit a dismissal only after an investigation, each of the Claimants wrote a letter to the Superintendent of Buildings asking whether she had been dismissed from service or merely suspended. The Superintendent replied in writing to each that she had been discharged from service on the night of November 27, 1946.

Thus, Carrier clearly violated Rule 28 by dismissing Claimants without an investigation. The investigation Carrier attempted to hold after Claimants were dismissed was not authorized by Rule 28 and was of no force or effect so far as Claimants are concerned. What Carrier might have done (and still might do) would have been first to reinstate Claimants and thereafter to follow the provisions of Rule 28, in preferring charges, by holding an investigation, and, upon sufficient probative evidence being produced to warrant a dismissal, dismissing Claimants upon completion of the investigation. This was the procedure suggested in Award 2806.

In Award 2528 which involved the same Carrier, this Division held it was a violation of the rules to dismiss an employee without a hearing even though the employee admitted his guilt. We said: "To countenance the Carrier's disregard of Article VI in this instance would establish a precedent which, at another time, might be invoked against an innocent man." See also Award 1499.

In a number of discipline cases we have remanded the claim to the property for further hearing where the hearing already accorded was incomplete so as not to be fair and impartial. However, in those cases Carrier at least held a hearing as required, if not one which was fair and proper under the circumstances.

But in this case Carrier utterly ignored the Agreement by holding no investigation prior to dismissal whatsoever. Thus, our only recourse in view of Carrier's plain violation of Rule 28 is to sustain the claim. In doing so we repeat that we in nowise judge the guilt or innocence of Claimants—that is for Carrier to do at an investigation held as required by Rule 28.

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 Carrier violated the Agreement.

AWARD

Claims (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of April, 1948.