

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**

MILWAUKEE-KANSAS CITY SOUTHERN JOINT AGENCY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

Caller Mr. J. E. Courtney be compensated for wage loss suffered January 30, 1946 (date dismissed) to June 17, 1946, when reinstated as result of instructions issued by the Vice President in Charge of Labor and Public Relations.

OPINION OF BOARD: Claimant has the position of caller in the Joint Agency at Kansas City maintained by the Milwaukee Railroad and the Kansas City Southern.

The controlling Agreement is the Clerks' Agreement with the Kansas City Southern of April 1, 1943.

Claimant was charged:

"Charge: Inefficiency in the discharge of duties, assigned, and your persistent refusal to follow out instructions of night foreman, also your uncooperative actions when handling business pertaining to dispatching of engines and trains with transportation department employees in the Milw-K.C.S. Joint Agency."

After a hearing Claimant was dismissed on January 30, 1946. He was reinstated on June 17, 1946. However, Claimant insists that the evidence at the investigation did not justify dismissal and claims reimbursement for all wage loss sustained.

Claimant had an argument with the roundhouse foreman, they both got "hot," and the foreman ordered Claimant to leave the property, and, when Claimant refused, had him removed.

We have carefully studied the transcript of the investigation contained in the record. We do not find any proof of inefficiency, nor any proof of a persistent refusal to following instructions. Claimant did refuse to leave the property when first told to do so, but both men were angry and had had words. Such conduct does not sustain that portion of the charge. We do not find any proof of any failure to cooperate in handling Carrier's business.

Since the evidence adduced does not sustain the charge, the discipline imposed by dismissing Claimant was unreasonable and arbitrary.

Accordingly, the claim must be sustained.

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

Claim 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.