

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee.

PARTIES TO DISPUTE:

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

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY**

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

- (a) That the Carrier violated agreement rules when under date of March 10th, 1947, A. E. Salisbury, 3d, Ticket Clerk, Passenger Station, Mankato, Minnesota, was dismissed from Carrier service, and
- (b) That Clerk A. E. Salisbury, 3d, be restored to duty, without prejudice, and with full seniority and/or all other rights accruing to him by virtue of continuous service, as of March 3d, 1947, and
- (c) That Clerk A. E. Salisbury, 3d, shall be reimbursed for all wage and monetary losses sustained by his dismissal from Carrier service.

OPINION OF BOARD: On March 3, 1947, the Claimant, a Ticket Clerk assigned to the third trick at Mankato, Minnesota, was held from service by his immediate superior who was the Passenger and Ticket Agent at that point. On the same day the Claimant was notified to appear for investigation on March 5th because of "alleged insubordination to his immediate superior."

On agreement between the parties the hearing was postponed until March 6th at which time it was again postponed due to the protest of the General Chairman that "no specific charge is contained in the notice to appear for investigation."

The investigation was held on March 8th pursuant to a notice to Claimant from the Division Assistant Superintendent which stated the subject of the investigation as being "charges of insubordination preferred by your superior officer * * * as result of your non-compliance with various instructions issued to you by him, as set forth below:"

The notice then set forth the specific charges of such failures on the part of the Claimant which are alleged to have occurred from December 10, 1946, to February 15, 1947.

As a result of the investigation Claimant was found guilty and dismissed from the service.

The formal requirements of the Rules of the Agreement on Discipline and Grievances were complied with.

The first objection of the Brotherhood is the contention that under Rule 23 of the Agreement the Carrier had no right to charge applicant for any misfeasance or nonfeasance which occurred more than "seven days before charge or prior to the last seven days employed." In making this contention the Brotherhood is apparently misconstruing Rule 23. That Rule provides no time limit on bringing charges after an offense is known, but only provides for the time within which the investigation must be held and a decision rendered. The applicable provisions of said Rule state:

"The investigation shall be held within seven (7) days of the date when charged with the offense or held from service. A decision will be rendered within seven (7) days after completion of investigation."

Here the applicant was held from service and first charged on March 3, 1946. The investigation was completed on March 8th, five days later, and the decision rendered on March 10th, all well within the time limits fixed by the Rule.

The Agreement fails to fix any time limit within which charges must be filed after an offense is known to the Carrier. It is true that an offense might be condoned where continued repetition of the offense is known to and apparently acquiesced in by the Carrier without any protest. There is no evidence of such action on the part of the Carrier here.

While the evidence as to the specific charges against the Claimant is conflicting, many of the charges were, at least by implication, admitted and an attempt was then made to excuse the Claimant for failure to follow instructions by reciting his alleged mistreatment by his immediate superior, the Passenger and Ticket Agent. If the accusations against the Agent are based on fact he was a difficult person to work with, but that fact, if it be a fact, does not excuse the claimant from doing his work nor from following the instructions of his superior. Awards Nos. 3342 and 3321.

The most often repeated charge against the Agent is that on one occasion he tore up a time claim for 15 minutes overtime which Claimant had handed to him. If the Agent did this his action could have been presented by the Brotherhood to the Carrier.

One of the most serious of the specific charges against Claimant concerned the actions of the Claimant and his father towards the Agent on February 4, 1947. The Agent testified fully concerning this occasion. If the charge were not based on facts the Claimant could have called in his father as a corroborating witness or have explained why he was not available. The Claimant did neither.

The decision of the Carrier was based on substantial evidence and the discipline, dismissal from the service, while severe was not so incommensurate with the offenses charges that we can say that the Carrier in imposing such discipline acted in an arbitrary, unjust or unreasonable manner.

We find no ground for disturbing the decision rendered by the Carrier or the discipline imposed.

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

The Agreement was not violated.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1948.