

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**

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: That Frank Baranowski, Leading Red Cap (Usher) at Grand Central Station, Chicago, Illinois, be reinstated to service with seniority and other rights unimpaired, including vacation, and that he be compensated for all wage and other losses sustained by him account of action of Carrier in dismissing him from service without just cause and in violation of the Clerks' Agreement.

OPINION OF BOARD: The record shows that Frank Baronowski was assigned as Leading Red Cap at Grand Central Station, Chicago, Illinois. On November 11, 1946, he was notified to appear for investigation on a charge of failure to properly check passenger baggage and to make proper remittance at the completion of his tour of duty on certain dates specified. After investigation, Baronowski was dismissed from the service. He contends that he was unjustly dismissed and asks that he be reinstated with seniority rights unimpaired and compensated for wage losses.

The evidence shows that on September 19, 1946, and numerous other dates specified, W. H. Kramer, an Investigator of the Police Department, and W. G. Hendricks, a Lieutenant of Police, placed Baronowski under surveillance during his tours of duty. They testify positively to the number of bags handled by Baronowski on each of the specified days, that he failed to check baggage in accordance with the Carrier's instructions and that he turned baggage over to patrons without receiving a claim check. Without detailing the evidence, the testimony of these two witnesses is that Baronowski handled 967 pieces of baggage during the period and that he remitted for 476 pieces to the Company. Some of these transactions are also corroborated by S. J. O'Neill, a Lieutenant in the Police Department. Baronowski denies that he has mishandled baggage in any way or that he failed to remit for any baggage handled.

The evidence produced by the Carrier at the investigation, if believed, is amply sufficient to sustain the charge made. For this Board to interfere with the action taken by the Carrier under those circumstances would require us to pass upon the credibility of the witnesses involved, a function we have consistently declined to perform. We have often said, and we think correctly, that it is not the function of this Board to substitute its judgment for that of the Carrier or to determine what we might have done if it had been our duty to make the decision in the first instance. It is only where an examination of the record reveals that the action taken was unjust, arbitrary or unreasonable that we may interfere with the discipline assessed. Where the evidence produced in support of the charge, if believed, is sufficient to sustain

it, even though there may be evidence directly in conflict, the imposition of discipline cannot be said to be unjust, arbitrary or unreasonable. It is not the function of this Board to weigh the evidence or to determine the credibility of witnesses. If there is substantial evidence in the record to support the charge, even though contradicted, the Carrier's action in assessing discipline cannot be said to be arbitrary or capricious.

The finding of the Carrier that Baronowski was guilty of the acts charged being supported by the evidence, the dismissal of Baronowski from the service was fully warranted. Dismissal from service is not excessive for fraud and dishonesty in the handling of the Carrier's business.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing thereon;

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

The Agreement was not violated. .

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.