

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES

THE CINCINNATI UNION TERMINAL COMPANY

STATEMENT OF CLAIM: This claim is filed on behalf of T. A. Williams, W. L. Jones, Edward Lathan and Thomas Gee, Red Caps employed by the Cincinnati Union Terminal Company, for pay for time lost in the amount of five (5) days for Messrs. Williams, Jones and Lathan for discipline imposed, due to charges which have no basis in fact. We also ask that the reprimand assessed against the record of Mr. Gee be removed.

We further claim that the charges against these employees of being poor Red Caps, as indicated by the financial records of various months, have not been proved and the method used by the Carrier in levying discipline is highly questionable.

OPINION OF BOARD: This is a discipline case. Briefly stated, the facts upon which the discipline was assessed were these. The employees, Red Caps, are employed by the Carrier on an hourly basis. The Carrier, under a tariff, receives a 10¢ per parcel tariff charge which is collected by the Red Caps from the passengers and turned over to the Carrier. Any amount in excess of the tariff charge paid by the passenger to the Red Cap is retained by the employee. Since 1938 the Carrier has posted semi-monthly statements showing the earnings and receipts of each Red Cap and their relative standings from the standpoint of number of parcels carried. The claimants, Jones, Lathan and Williams, ranked 59, 60, 61 out of 61 men on this list for the first half of October, 1947 and Gee was 63rd out of 63 men for the second half of October, 1947. The three claimants were given notice to appear for investigation "to explain your poor record as a Red Cap which is indicated on first half of October, 1947 reports and to review your record." Gee was given a similarly worded notice. At the hearing the employees were represented by a representative of the Organization.

In effect, the Employees contended that the Red Caps were not given adequate notice of the precise charges against them and that the method of assessing discipline, to wit, on the basis of the number of parcels carried and relative standings, is highly questionable.

We believe that the employees were given adequate notice of the charges against them and were afforded a fair hearing. It is to be noted that at the hearing no objection to the notice of hearing was raised by the Employees' representative and that both the employees and their representatives indicated that they felt the investigation was fair and impartial before its conclusion.

As to the method of assessing discipline by the Carrier, it is a well settled rule of this Division that it will not substitute its judgment for that

of the Carrier in assessing discipline unless the Carrier has done so capriciously or arbitrarily. In this instance we do not believe that the Carrier has been capricious or arbitrary. Consistently poor productivity of an employee over a reasonably long period of time is certainly a factor in determining his fitness. Here the records of the employees indicated such poor productivity and it was unexplained at the investigation although full opportunity for such explanation was given. The disciplined assessed was not harsh or arbitrary. That it was effective is evidenced by the subsequent showings of these claimants on their return to duty. We cannot say that the Carrier was capricious or arbitrary in this matter on the basis of the record and, accordingly, the claim must be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1948.