

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

Discipline of three (3) days suspension imposed upon E. L. Reed, Station Baggage, 30th Street Station, Philadelphia, Pennsylvania, be removed and that he be reimbursed for the monetary loss of three days pay for September 8th, 9th and 10th, 1947. (Docket E-491.)

OPINION OF BOARD: This is a discipline case. The facts insofar as pertinent to a decision on this Docket are as follows: On March 26, 1947, Claimant Reed, a station baggageman, reported late for duty and in street clothes. At the time he reported, the Assistant Agent, one McLaughlin, was on the platform and Reed asked if he could go to work. McLaughlin said, "Not with the clothes you have on." In the course of the conversation, McLaughlin said to Reed, "You've been drinking." Reed admitted to having had a glass of beer about two hours before. On McLaughlin's orders, Reed was not permitted to work that day. Subsequently, an investigation was held and Reed was tried on a charge of "Reporting late for duty and drinking intoxicants prior to reporting for duty, March 26, 1947." The investigation was made by McLaughlin and the trial also was conducted by him. Employees assert that the claimant was not given a fair and impartial trial.

One of the keystone precepts in the American concept of jurisdiction is the right of the accused to a trial conducted by a totally disinterested and unprejudiced jurist and, in connection with certain offenses and civil litigation, to trial by a jury of his peers. It is with this principle in mind that provisions requiring that employees be not suspended nor dismissed from service without a fair and impartial trial, are written into collective bargaining agreements. Such a provision is contained in the instant agreement. We believe the parties appreciate that strict accordance with all the constitutionally established safeguards of justice for one accused of a crime cannot be afforded an employee charged with dereliction in the performance of his work. It is recognized, for example, that the hearing officer will probably be an official of the Carrier, but the Agreement does place a burden upon such official to exercise as much impartiality as can be attained under the circumstances. For this reason, the hearing official should be as detached from the situation resulting in a charge as circumstances will permit. As was said in Award 3288 and repeated again by us in Award 4316 "the Carrier representative is both an interested party and also a 'fair and impartial' judge. The difficulty of the position in which the Carrier is placed requires

meticulous care in their conduct in order that both functions may be properly performed." In our opinion, it is well-nigh impossible for impartiality to be shown where the same person functions in the tripartite capacity of complaining witness, prosecuting attorney and trial judge. Although we appreciate that some deviation from strict legal procedures in hearings of this kind are contemplated by the parties when entering into the collective bargaining agreement and some degree of tolerance with such deviations can be expected from this Board, the procedure in this instance hasn't retained the slightest semblance to the observance of American precepts of a fair and impartial trial.

An affirmative award is required.

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:

The the carrier and employes involved in this dispute are respectively carrier and employes 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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 16th day of February, 1949.