

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John M. Carmody, 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:

Warren H. MacBride, Station Baggage-man, Pennsylvania Station, New York City, New York, be returned to service with all right unimpaired and compensated for all monetary loss sustained dating from May 7, 1948, until adjusted. (Docket N-221)

OPINION OF BOARD: This is a discipline case. We quote the Joint Statement of Agreed Upon Facts:

"Warren H. MacBride, Station Baggage-man, Pennsylvania Station, New York, was disciplined by dismissal for charge appearing on G-32 Notice dated June 25, 1948, as a result of an investigation which was held on May 7, 1948, and a trial which was held on June 4, 1948. The charge appearing on G-32 Notice is as follows:

Apprehended by P.R.R. and N.Y. City Police with papers on person while on duty indicating gambling on horse races and attempt to dispose of same when apprehended, April 23, 1948.

Appeal from discipline as imposed was made which appeal was denied. Copy of the trial statement is attached hereto and made part of the Joint Statement of Agreed Upon Facts."

It differs from other discipline cases that usually come to the Board in at least two respects. First, it involves a charge of participating in one form of gambling, betting on horse races or assisting others to bet, while on duty, and second, the dismissal was imposed after the Claimant has been tried and acquitted by the Court of Special Sessions of the City of New York. The record of that Court, over the signature of the Clerk of Court, states that Warren MacBride, defendant, charge Bookmaking, pleaded not guilty, on trial and acquitted on June 17, 1948.

Warren MacBride, Baggage-man in the Pennsylvania Railroad Station in New York City, was arrested (apprehended is the term used in the charge) while on duty at 1:00 P.M., April 23, 1948. The arrest itself appears to have been made by one or two New York City plainclothes patrolmen although the report of the action was made to his superiors by Pennsylvania Railroad Patrolman L. B. Olcott on what is termed an "arrest report". This report gives name

and address of the Claimant, his occupation, location when arrested, the charge, time of day, circumstances and disposition of case. This is an important document in our consideration of the case. Under Charge we find "Bookmaking," under Circumstances the report states, "MacBride was taken into custody on a charge of making book (accepting bets on horse races) at above mentioned time and place by Patrolman L. B. Olcott, P.R.R., and Detectives Ray and Hartling, 3rd Division, New York City Police Dept. Bookmaking is a violation of Section 986, Penal Law."

Under "Disposition of Case in Detail" we find "Arraigned Gambler's Court, 100 Center St., NYC, Judge Hersimaker, Pleaded Not Guilty, Postponed April 29th—Held in \$300 bail. (Signed) L. B. Olcott, Patrolman."

The charge as reported here was changed later by the Carrier.

MacBride was at work on table C. Whether he recognized one or other of the three police officers as they converged upon him is not clear, but two of the officers testified that before he was apprehended he threw some papers through a chute to a conveyor belt. One officer gained access to the conveyor and picked up three pieces of paper some 300 or 400 feet from the chute which he introduced as evidence at the trial. He also introduced two additional pieces of paper taken from Claimant when he was searched before his arrest, one similar to the recovered pieces, and another containing names, initials and amounts which MacBride admitted was his and which the officer identified as "commonly known as a pay off slip."

After arraignment he was released in bail and returned to duty. Between the time of his arrest and trial by Carrier the Carrier changed the charge from Bookmaking to "Apprehended by Penn. Railroad and New York City police with papers on person while on duty indicating gambling on horse races and attempt to dispose of same when apprehended."

The Organization charges unfairness because the trial was postponed and because one of the city patrolmen who participated in the arrest was not present. Claimant made no effort on his own behalf to bring him in. We have no way of knowing how any testimony he might have given would differ from that given by the City Officer who did appear. This trial followed the procedure customary in these discipline trials with an official of the Carrier acting as trial officer. The Claimant and his representative participated and were allowed to cross-examine witnesses. We doubt that the charge of unfairness, as these trials go, is warranted.

A trial may be conducted with complete fairness and impartiality and still result in a questionable verdict. Wrong conclusions can be drawn from the testimony. How otherwise can we account for the numerous decisions of lower courts, in all jurisdictions, that are remanded for further trial or reversed by higher courts when they go up on appeal where the Judges are experienced, even learned, in the law and all of its processes as they affect human and property rights? Seniority is involved here as well as employment.

Whether the evidence here is sufficiently conclusive to justify dismissal in the face of Claimant's acquittal before the Court of Special Sessions of the City of New York warrants examination.

The Carrier maintains acquittal by the Court of Special Sessions is not conclusive. We would be inconsistent if we did not admit this but at least neither the Judge nor the jury is shown to have been a party to the controversy. The Carrier maintains, also, the Claimant was handling United States mail, implying an unusual degree of trust. This is a proper consideration but neither his honesty with respect to his work responsibility nor his ability to do it is in question here, nor is there testimony here that even if he had had in his possession the various pieces of paper attributed to him indicating that he may have bet on horse races or even taken bets, he actually gambled or took bets during his working hours that belong to the Carrier. The Pennsylvania Railroad patrolman did not see him take a bet. The one City plainclothes patrolman who testified at the trial said he did see MacBride take a bet but could not identify the individual who made it, nor did he say where or when he saw it.

The source of the information that led the police officers to MacBride was not revealed; it was said by them to be confidential. The record does not indicate how long they observed him, whether a few minutes, an hour, a day or more, nor does it indicate whether postal inspectors, commonly known to be numerous and alert, made any complaint to the Carrier.

Bookmaking is a penal offense in New York. The police officers searched MacBride and then arrested him, charging him with Bookmaking. He pleaded "Not Guilty" and was acquitted before the Carrier dismissed him on a later modified charge.

The Carrier has a right to demand competent, honest, even diligent service on the part of its employes during working hours. The Agreement, presumably, is devised for mutual protection. We are not persuaded that the Carrier has proved conclusively that Claimant MacBride was making book or taking bets on horse races while on duty as charged.

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 employe 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 evidence developed at the trial did not justify dismissal.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of October, 1949.