

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Edward F. Carter, Referee

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**PARTIES TO DISPUTE:**

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

**THE NEW YORK, NEW HAVEN AND HARTFORD  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

1. Management violated rules of our Agreement with the Carrier effective July 1, 1947, that govern the hours of service and conditions of employment of employees of the Carrier represented by the Brotherhood in the handling of such matters connected with the employment of Mr. Joseph T. Bitsko, Freight Platform laborer at Whiting Street Warehouse, Bridgeport, Connecticut and his denial of employment to which he was entitled as an employee and under the conditions prescribed in the Agreement during period June 22 to September 8, 1948.

2. That Mr. Bitsko be compensated for wage losses sustained resulting from Management's actions as set forth in the preceding paragraph.

**OPINION OF BOARD:** On June 21, 1948 at 3:45 p.m., the claimant, Joseph T. Bitsko, was working as a laborer on the Whiting Street Freight Platform in Bridgeport, Connecticut. At that time he became involved in an altercation with one Klosiewicz, also a freight platform laborer. It is asserted that Bitsko attempted an assault on Klosiewicz with a club and kicked him in the groin before the altercation was quieted. The matter was reported to the foreman that afternoon by Klosiewicz. Shortly after reporting for duty the next morning, Bitsko was ordered to report to the Freight Agent. On arriving at the office of the Freight Agent, an investigation was held. The transcript of the investigation labels it as "Investigation held in injury to Charles Klosiewicz". Bitsko was held out of service as of June 22, 1948 and on July 12, 1948, he was dismissed from the service. He was restored to service on September 9, 1948, with seniority unimpaired and without pay. It was expressly stipulated, however, that Bitsko's return to service was without prejudice to his claim for compensation from June 22, 1948 to September 9, 1948.

It is the contention of the Organization that the investigation and dismissal were conducted contrary to the provisions of the applicable Agreement and were insufficient to sustain the assessment of any discipline against him.

The applicable rules of the controlling Agreement are:

**"Rule 16—Discipline**

"Employees who have been in the service sixty (60) days or whose applications have been approved in advance of such time will not be disciplined or dismissed without a fair and impartial hearing. Hearing will be held within seven days of the date when charged with the offense or held from service, and a decision rendered within ten days from date of completion of hearing. Suspension pending hearing or as discipline following a hearing will not be deemed a violation of this principle. It will not be the policy to suspend employees pending a hearing for relatively minor offenses."

**"Rule 18—Hearings**

"(a) At a reasonable time prior to the hearing, employee shall be apprised of the precise charge against him or her in writing.

"(b) If he desires to be represented at such trial, he may be accompanied by the duly accredited representative as that term is defined in this agreement and shall be given the opportunity to secure the presence of necessary witnesses. The accused employee or the duly accredited representative shall be permitted to question witnesses. Such employee shall make his own arrangements for the presence of said representative and his own witnesses and no expense incident thereto will be borne by the railroad."

We point out that the altercation occurred within forty-five minutes of quitting time on June 21, 1948. The investigation was held the next morning. Claimant was not given any notice of the precise charges against him. No written notice of any kind was ever served upon him. He had no opportunity to obtain representation or to obtain evidence for use at the hearing. The hearing itself was misleading as it was labeled an "investigation held in injury to Charles Klosiewicz". The decision of the Carrier was rendered twenty days after the purported investigation and not within ten days as the rules provide.

The Carrier contends that a strict compliance with the rules was waived by the claimant. The transcript of the proceedings held at the investigation does not affirmatively show a waiver. Claimant does not speak English and required the services of an interpreter. The record does not disclose that he was familiar with all that occurred or that he understood its effect. While this Board has held that an employee with full knowledge of the situation may waive full compliance with the rules in a disciplinary proceeding, such a rule cannot be applied to a situation such as we have before us. The Carrier has failed to comply with almost every provision of the controlling rules. The purpose of the rules was in no sense accomplished by the procedure here followed. The most simple requirements of a fair and impartial investigation were ignored. An employee who cannot speak English, without a representative, not learned in investigation procedure, and not shown by the record to have fully understood the situation confronting him, cannot be deprived of valuable rights on the theory of a waiver. The rules provide the method by which those rights may be cut off or restricted. The Carrier did not even attempt compliance with the Agreement. Under such circumstances the Carrier violated the Agreement and ineffectually attempted to suspend and dismiss this employee from the service. 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:

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 Agreement was violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1950.