

Award No. 4829

Docket No. CL-4817

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 PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the terms of the Rules Agreement, effective May 1, 1942, when it dismissed John C. Tumbelty, Clerk, Philadelphia Terminal Division, from service, effective May 4, 1948.

(b) John C. Tumbelty be restored to service with unimpaired seniority, and be reimbursed for all monetary loss sustained, dating from April 8, 1948, and until adjusted. (Docket E-596).

OPINION OF BOARD: Claimant was assigned to the position of rate clerk (Group 1), located at Sears Station, Philadelphia, Pennsylvania, Philadelphia Terminal Division. On April 22, 1948, after notice, Claimant was tried on the following charge:

"While employed at Sears Station, P. T. Division, you carried on arguments and discussions with other employes on matters not pertaining to your duties, thereby causing disruption of the work of the office."

After the trial, Claimant was dismissed from the service as of May 4, 1948. The Organization contends that the Carrier violated the terms of the current Agreement in dismissing this Claimant from the service and requests that he be restored to service with seniority unimpaired and be reimbursed for monetary loss.

The record shows that this dispute was precipitated by a letter from an officer of Sears, Roebuck & Company to the agent at Sears Station to the effect that Claimant was disturbing the employes of that company by becoming argumentative on controversial subjects not in relation to his duties with its employes. The charges brought against Claimant was as hereinbefore quoted. It will be noted that the charge is restricted to arguments and discussions.

The evidence relates primarily to an argument which took place at Sears Station on March 12, 1948, between Claimant and two women clerks,

Mrs. Fielding and Miss Wilson. It indicates that a heated argument ensued, induced primarily by statements of Claimant tending to uphold the conduct of Communist Russia as against this country. There is evidence that Claimant had a tendency to provoke arguments of this kind and that they have a disrupting influence upon other employees in the office.

The record shows, however, that the situation had not developed to the extent that the Agent at Sears Station had heard of it. There is evidence that Chief Clerk Love of the Consolidated Freight Agency, who was the immediate supervisor of Claimant, admonished him a time or two to remain at his own desk during working hours. No official reprimand was ever given him, nor does the record indicate any warning about his engaging in arguments and discussions. That the Carrier was obliged to take notice of the complaint of Sears, Roebuck & Company, a user of its service, is readily apparent. Dismissal from service was not an exclusive remedy in handling the situation. The complaint of Sears, Roebuck & Company could have been disposed of by disqualifying Claimant for his position and assigning him elsewhere. Arguments and discussions among employees are in the very nature of things bound to occur. If discipline were imposed on each such occasion, the problem of the Carrier would be of great magnitude. It is only where an employee becomes so irritable or belligerent in the discussion of his obsessions that he has lost his value as an employee, that dismissal from the service is warranted. The arguments and discussions carried on by this Claimant, as belligerent and irritating as they were, did not warrant the severance of his employment. With more than 25 years' service and a service record showing no acts involving moral turpitude or insubordination, the dismissal from service constituted excessive punishment for the offense committed. A suspension of 60 days would have been adequate under the circumstances.

Claimant will be restored to service as of June 6, 1948, with seniority rights unimpaired, subject to the right of the Carrier to disqualify him for service at Sears Station. Claim for monetary loss, if any, from June 6, 1948, will be sustained.

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 disciplinary action was warranted but dismissal from service found to be excessive under the circumstances shown.

AWARD

Claimant restored to service as of June 6, 1948, with seniority rights unimpaired, subject to the right of the Carrier to disqualify him for service at Sears Station. Claim for monetary loss, if any, from June 6, 1948 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of March, 1950.