

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

(Scott M. Loftin and John W. Martin, Trustees)

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

The Carrier shall be required to pay Laborers C. J. Green, J. L. Hawkins and Elijah Carter for time lost from September 27 to November 22, 1949, inclusive.

OPINION OF BOARD: The substance of what happened in this case, as we view the record, is as follows. On October 3, 1949 the Agent notified Claimants:

"For evading your duties and absenting yourself without proper authority at Bay Street Warehouse, Jacksonville, September 26, 1949, you are hereby dismissed from the service. . ."

Each of the Claimants had been in the service of the Carrier at this warehouse for 6 years. The Agent was the only direct witness against Claimants; and after the investigation and hearing required by Rule 29, the Agent determined that the dismissals should stand. His decision was regularly appealed pursuant to Rule 30, as a result of which the reviewing officer modified the dismissals, notifying the General Chairman as follows:

"It is my conclusion, therefore, that their dismissal was justified, and your request that they be reinstated with pay for time lost is declined. I am, however, reinstating them without pay for time lost on the assumption that they have now been impressed with the importance of properly attending to their duties. These reinstatements are being made without prejudice to the position of either party with regard to the claim for pay for time lost."

The episode occurred at the shank of the day. Loading ordinarily ceased at 4:30 P. M. The Check Clerk in charge of Claimants' gang checked off at 4:45 P. M. and apparently had not instructed them to report to the Warehouse Foreman. At such a time a gang, in the parlance of the

Warehouse Foreman, was "idle", although this was said not to mean "literally idle" but getting cars ready to pull or helping unload a truck if one arrived. Claimants were at the west end of the warehouse which was where they had been unloading at 4:30 P. M.

The Agent started walking through the warehouse after 4:30 P. M., talked to the Warehouse Foreman, worked his way toward the west end of the warehouse, looking in the cars as he went along to see if any men were in them and also to see how the loaded cars looked. He found Claimants at the arch door leading into the west section of the warehouse, immediately accused them of loafing and hiding out, and instructed them to go to the Warehouse Foreman and assist in unloading the trucks that were backed up to the city doors at the east end of the warehouse. This they did and the time clock shows they punched out at 4:58 P. M.

Precise time intervals were important, and so was the testimony of the Check Clerk. The General Chairman suggested further hearing, but the reviewing officer bottomed his conclusion solely upon the evidence given by Claimants at the investigation and hearing, saying:

"After reading the record of the investigation, I cannot agree with you that it does not support the charge. Hawkins, Green and Carter admitted that they were standing close to each other idle at the time charged, but offered three different reasons for their idleness which I agree with the Superintendent, only serve to emphasize that they were evading their duties. That basic evidence cannot be explained away by attempts to reconcile estimates of the various witnesses as to the time elements, distances and work schedules involved."

The record of the investigation and hearing is before us. We are unable to agree that an admission of guilt can fairly or reasonably be gathered from the evidence of Claimants, taken as a whole. Everyone "stands idle" at moments during a day, but this is not "evading duty" in any reasonable sense of the term.

There is no evidence that Claimants were "hiding out" and no evidence that they were violating any specific work assignment after the Check Clerk went off duty. The fact that exact intervals of time and distance are difficult to establish suggests the advisability of hearing all estimates of all available witnesses. Moreover, the case was entitled to close scrutiny, for the officer who made the decision to dismiss stood in the difficult dual position of judge and sole prosecuting witness.

It is recognized that the Carrier has serious responsibilities for safe and efficient operation and that the maintenance of disciplinary control in a large and busy freight agency is important. But indiscriminate dismissals, while no doubt effective, are not permissible means to such an end.

The reviewing officer started in the right direction when he modified the dismissals, but he stopped short of a reasonable conclusion when he refused to set them aside altogether.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1951.