

Award No. 5297
Docket No. CL-5284

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:

Mr. J. B. Fiveash, who was dismissed from service of the Carrier on February 16, 1950, shall be reinstated with seniority and other rights unimpaired.

OPINION OF BOARD: Claimant was dismissed from the service of the Carrier and the claim is for reinstatement with seniority and other rights unimpaired but without compensation.

We have considered the entire record with care. There is no need to review it in detail here, for the only contention is that, in all the circumstances, dismissal was too harsh. There is no claim that claimant was not accorded a fair trial.

Claimant has a record of 33 years of satisfactory service with the Carrier. In 1949 while employed as Teller-Accountant at the Carrier's Jacksonville Freight Agency, he connived for pay with a swindler to issue spurious freight bills for the purpose of defrauding the Republic of Mexico by adding \$17,577.81 non-existent freight to the purchase price of 101 cars of rail material.

FIRST. Numerous Awards have been cited on behalf of both parties. While each case, particularly a case of this kind, should be dealt with on its own merits, the assessment of discipline should also be even-handed.

A review of the Awards cited shows that dismissals have been sustained in such cases as:

pilferage of a gallon bucket of paint by an apprentice (Award 2696); failure to account for dining car collections and insolence toward patrons (Award 2766); insolent and discourteous conduct including pulling a knife on a passenger—prior incidents over 20 years (Award 2772); refusal to observe a rule requiring claimant to reside "wherever required" (Award 2919); checking 967 pieces of baggage and remitting for only 467 pieces (Award 4608); partial responsibility for a wreck causing 14 deaths and property

losses over a million dollars (Award 4239); refusal to obey instructions of foreman (Award 4591); pilferage of commissary supplies (Award 4615); repeated failure of steward to give proper service (Award 4621—4 years' service); using unbecoming language and causing a disturbance in a PBX room preventing continuous operation of switchboard (Award 5009); time-keeper at a labor camp arranging credit for purchase of liquor at his son-in-law's tavern causing periodic outbreak of disturbances at the camp (Award 5026—29 years' service); porter while off duty in his home engaging in a shooting affray for which he was tried for murder and acquitted (Award 5104—18 years' service); using abusive and insubordinate language toward a superior under a belief that an instruction was unreasonable (Award 5170).

On the other hand, it has been said that "misdemeanors have never carried life sentences" (Award 913) and this Board has set aside dismissals and awarded reinstatements without reimbursement for loss in pay in such cases as:

leaving inflammable material in a shop overnight (Award 913—15 years' service); creating a controversy and using profane language in the presence of passengers while on duty (Award 1033); failure to get out of bed when called with the result that but one waiter out of a crew of four reported for duty on a Florida train to the great inconvenience of passengers who complained (Award 1443); using information that came to claimant as an employe of the Carrier for the purpose of levying an attachment upon goods of a shipper, which was a misdemeanor under the Interstate Commerce Act (Award 2014—28 years' service); wilfully failing and refusing to turn out the quantity of work of which he was capable (Award 2880—19 years' service); failing to comply with an instruction to attend and report in shorthand the proceedings of an investigation and changing the method of mail delivery resulting in delay while on vacation (Award 3066—21 years' service); absence from duty without permission and instructing his clerk to show him as present during absences (Award 3358—33 years' service); insubordination and using vulgar and obscene language toward a superior (Award 4722—3 years' service); violating instructions not to make information concerning produce shipments available to unauthorized persons (Award 4826—31 years' service); carrying on arguments and discussions on political subjects with other employes thereby causing disruption of the work of the office (Award 4829—25 years' service); accepting tips or gratuities (\$5 to \$10) after sales of transportation contrary to instructions (Award 5126); neglecting properly to check and load freight necessitating the unloading of truck (Award 5168).

SECOND. We are urged to set aside the dismissal principally for these reasons: that the Carrier suffered no loss; that dismissal amounts to a life sentence for what may be considered as a misdemeanor; and that dismissal is too harsh in view of claimant's long years of satisfactory service.

If the Carrier suffered no monetary loss, this was so because the scheme was detected at the outset. But apart from this, launching the Carrier's official documents into circulation to serve as the basis of a scheme to defraud, in and of itself, may not unreasonably be considered as serious as actual monetary loss.

There is little to lay hold of by way of mitigation here except the long years of satisfactory service. The discipline assessed was indeed grave; but so was the offense.

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 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 Agreement was not violated.

AWARD

Claim denied.

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.