

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

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

(a) The agreement governing hours of service and working conditions between the Railway Express Agency and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective October 1, 1940, was violated at the New Bedford, Massachusetts agency, June 22, 1949, in the treatment accorded R. O. Laurendeau in dismissing him from service as a result of an alleged investigation conducted June 17, 1949;

(b) R. O. Laurendeau shall be returned to service with seniority rights unimpaired and compensated for wage loss sustained retroactive to and including August 4, 1949; and

(c) He shall be allowed interest at the rate of one-half of one percent per month for all monies withheld by management through their arbitrary action in dismissing him from service.

OPINION OF BOARD: Claimant, the regular occupant of a position of Driver, was dismissed upon a charge of carelessness in the operation of an express truck and the violation of certain rules in "Instructions to Vehicle Employees."

Claimant collided with a passenger automobile which had stopped in front of him as had several vehicles ahead of it. The impact caused the three automobiles ahead to collide and resulted in six personal injuries and property damages to the express truck and the three automobiles.

FIRST. There is little or no conflict in the record of the investigation and hearing. It is amply established that Claimant was traveling about 18 miles per hour with only 8 feet clearance between his heavy express truck and the automobile immediately ahead of him. A bus several cars ahead stopped suddenly and everyone else in the line stopped without mishap except Claimant.

Claimant's own testimony at the hearing is sufficient to sustain the charge.

SECOND. When he was dismissed, Claimant had a clear record of eight years' service. About six months before his dismissal, the Carrier had been

willing to certify that his driving record for the five years preceding constituted "an outstanding contribution to public safety." Finally, the Note to Rule 29 represents an understanding that employees may be held out of service pending investigation except where "trivial offenses or minor infraction of rules are involved"; and yet the Carrier retained Claimant in service, not only pending investigation, but for three days after he was given notice of dismissal.

On the other hand, the damage caused both to persons and property was extensive; and this was a relevant consideration in determining the extent of discipline to be imposed.

In all the circumstances, it seems to us that the penalty of dismissal was unreasonable and an abuse of discretion and that Claimant should be restored to his former position on or before April 1, 1952, with seniority rights unimpaired but without compensation for wage loss 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 the Agreement was violated as above found.

AWARD

Claim for restoration to service on or before April 1, 1952 with seniority rights unimpaired sustained.

Claims (b) and (c) otherwise denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of March, 1952