

Award No. 5701  
Docket No. CLX-5609

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Adolph E. Wenke, 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 September 1, 1949 was violated at the Kansas City, Missouri Terminal in the treatment accorded Messenger Jack Slaughter Graham as a result of an alleged investigation conducted March 28, 1950; and

(b) The record shall be cleared of the charge made against him March 21, 1950 and he shall be returned to service with seniority rights unimpaired and compensated for wage loss sustained retroactive to and including April 3, 1950.

**OPINION OF BOARD:** This is a disciplinary proceeding involving the Express Agency's dismissal of Messenger Jack Slaughter Graham.

The Express Agency, on March 21, 1950, charged Messenger Graham, with violating Rules 508, 515 and 1136 of the General Rules and Instructions on March 17, 1950, when he was *protecting his assignment on Santa Fe Train 27*. It also charged him with "indecent exposure, conduct unbecoming an employe and beyond the realm of common decency in . . . urinating in public view on to a shipment of Dolly Madison Cakes."

We will not set forth Rule 508 as the record does not contain any competent evidence to support a finding that Graham was guilty of violating it.

Rule 515 provides: "All foodstuffs must be transported under sanitary conditions."

Rule 1136 provides: "Vehiclemen must not allow any person other than assigned employes of the Company to ride on their vehicles except by specific permission of the Agent. No employe shall be permitted to ride on a platform truck or station motor tractor. Employes are prohibited from riding platform trucks or station motor tractors unless specifically authorized to do so by the General Manager."

The Brotherhood's contention that the charges made by the Agency against Graham were not sufficiently specific to inform him of their nature, as re-

quired by Rule 29 of the parties' Agreement, is without merit. Likewise the contention that he did not have a fair and impartial trial as contemplated by Rule 29 because the Division Supervisor acted as accuser, prosecutor and judge. As stated in Award 4840 of this Division:

"... It must be borne in mind that the conduct of a hearing in a disciplinary proceeding does not require an adherence to all the attributes of a trial of a criminal proceeding in the courts. Prior to the advent of collective agreements, management could hire and fire, or otherwise discipline employees, without reason and without cause. This prerogative has been limited by contract and it is the enforcement of these limiting contractual provisions with which we are here concerned. In other words, the Carrier must show that it acted upon evidence that warranted the application of discipline or, stated inversely, it must show that it did not act unreasonably or arbitrarily. The Carrier's trial officer represents it in making this determination. It is not a case of the trial officer being both prosecutor and judge, it is a matter of contract compliance in which the trial officer interprets the Agreement in the light of the evidence in the first instance. . . ."

It would undoubtedly be desirable to have a neutral party act as judge in important investigations, such as the one here involved, but until the parties so provide in their agreements this Division is without authority to require it.

There is direct evidence showing that Graham rode from the perishable dock to tracks 19 and 20 on a tongue connecting two wagons. This was in violation of Rule 1136. But such violation is certainly not sufficient grounds on which to discharge an employee with approximately 34 years of satisfactory service.

There is also evidence by James W. Eib, senior officer with the Security Department, that Graham urinated onto a package of cakes in his car and the Agency was therefore not clearly wrong in finding Claimant was guilty of this phase of the charges made against Graham. However, there are certain extenuating circumstances which cause serious doubt as to the truth of Eib's testimony on which such finding must necessarily be based. First, the fact that Eib did not immediately confront Graham with the charge when the physical facts of what he is charged with would have been clearly discernible, and Second, complete lack of evidence that any shipment was damaged. In view of the Claimant's 34 years of satisfactory service and these extenuating circumstances we find that the dismissal was unreasonable and arbitrary punishment and that he has already been sufficiently punished by having been off his job for about two years.

It is the opinion of this Division, considering the record as a whole, that Graham should be returned to service with his seniority unimpaired but that his record should not be cleared of the charges nor should he be compensated for wages lost.

**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 Agency's act of dismissing Graham from the service was unreasonable and arbitrary.

AWARD

Claim (a) and that part of (b) asking that Graham be returned to service with seniority unimpaired sustained but in all other respects Claim (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 4th day of April, 1952.