

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**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(a) The Agreement governing hours of service and working conditions between the Louisville & Nashville Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective January 1, 1938, and subsequent revisions, was violated by the Carrier at Ravenna, Kentucky, on March 6, 1951, in the treatment accorded District Chairman C. W. Joseph in dismissing him from service as a result of investigation conducted at Hazard, Kentucky, on January 17, 1951; and

(b) Employee Joseph shall be restored to service with all rights and privileges unimpaired and compensated for wage loss sustained on March 7, 1951 and subsequent thereto until restored to service.

OPINION OF BOARD: This is a discipline case involving stenographer-clerk C. W. Joseph, Hazard, Kentucky, whom Carrier dismissed from service. The System Committee contends Carrier violated its agreement with the Clerks in so doing and asks that Joseph be restored to service with all rights and privileges unimpaired and compensated for wage loss sustained retroactive to March 7, 1951.

Joseph was charged by Carrier, under date of January 11, 1951, with *insubordination and conduct unbecoming an employe while performing service* as stenographer-clerk in an investigation accorded crew-caller Walter Gibson at Hazard, Kentucky, on January 4, 1951.

The record shows Carrier properly complied with the procedural requirements leading up to the hearing held on January 17, 1951, at Hazard, Kentucky. At this hearing Joseph was represented by a fellow employe of his own choosing and received a fair and impartial hearing within the intent and meaning of Rule 19 of the parties' agreement. The facts will not be set out in detail but they establish Joseph was guilty of insubordination and conduct unbecoming an employe when, as stenographer-clerk in charge of making the record in the investigation of crew-caller Walter Gibson on January 4, 1951, he refused to put in the record a question asked by a representative of the Carrier.

Carrier, by letter dated March 6, 1951, advised Joseph that he was dismissed for conduct unbecoming an employe while acting in the capacity

of stenographer-clerk in the investigation accorded crew-caller Walter Gibson at Hazard, Kentucky, on January 4, 1951. The Committee suggests that this decision was not rendered in accordance with the provision of Rule 19 (c) of the parties' agreement relating thereto wherein it is provided: "Within five days after the investigation closes (the investigation is not considered closed until the official receives approval of the head of the department) the proper officer shall render a decision, and advise the accused in writing of the penalty imposed." The language "the investigation is not considered closed until the official receives approval of the head of the department" is not an exception to but is a definition of when the investigation is closed. There is no showing that the decision rendered by Carrier on March 6, 1951 did not come within the time limits as provided in Rule 19 (c) and in the absence of any such showing we will presume it did.

It is apparent that Joseph's difficulties arose out of a situation wherein he was acting in a dual capacity. At the investigation of crew-caller Walter Gibson on January 4, 1951, Joseph was Gibson's representative at the hearing in accordance with Gibson's rights under Rule 19 (c) of the parties' agreement. Part of Joseph's duties as a stenographer-clerk was to take and transcribe the record of investigations. This he was doing at the hearing accorded crew-caller Walter Gibson. In his conception of his duty to Gibson as his representative Joseph breached his duty to the Carrier as its employee. We think this situation came about because of fault on the part of both parties. When Joseph knew he was going to represent Gibson at this hearing, he should have requested the Carrier to relieve him from his duties as a stenographer-clerk at the hearing. This he failed to do. On the other hand, Carrier, knowing he was representing Gibson, should have relieved him from his duties of stenographer-clerk at the hearing. This it failed to do. No person should act in a dual capacity and this is particularly true in a matter of this kind. Considering the circumstances out of which the conduct arose, of which claimant was found guilty, and his past record as an employee we find the punishment imposed to be unreasonable. We think claimant should be restored to service with all his rights and privileges unimpaired but should not be compensated for any wage loss.

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 Carrier violated the Agreement.

AWARD

Claim sustained to the extent that claimant be restored to service with all rights and privileges unimpaired and with immediate right to exercise his seniority, but denied as to any claim for compensation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

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

Dated at Chicago, Illinois, this 23rd day of May, 1952.