

Award No. 5933

Docket No. CL-6020

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

WESTERN WEIGHING AND INSPECTION BUREAU

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

(a) When on or about March 2, 1951 after an investigation, they removed J. Synowiecki, Laborer, from service in the Grain Door Department at Omaha, Nebraska claiming he was guilty of conduct unbecoming a Bureau employe (Trespassing) which fact was not proven in the investigation held at 2:00 P.M. February 26, 1951, Omaha, Nebraska, following Mr. Synowiecki's suspension on February 20, 1951.

(b) That Casmer J. Synowiecki be reinstated to service with all right unimpaired and compensated for all monetary loss sustained dating from February 20, 1951 at the time he was suspended until adjusted.

OPINION OF BOARD: Casmer J. Synowiecki, laborer, Carrier's Grain Door Department, Omaha, Nebraska, was suspended from service on February 20, 1951. On the same date he was furnished with a letter, he admits having received, which reads:

"This to notify you of your suspension as an employe of the Western Weighing & Inspection Bureau Grain Door Department at Omaha, Nebraska for the reason you were guilty of conduct unbecoming a Bureau Employe (trespassing).

"In accordance with the provisions of Rule 20 of our Working Agreement, an investigation will be held in my office at 203 Omaha Grain Exchange Building, Omaha, Nebraska, on Monday, February 26, 1951 at 2:00 P.M."

Formal investigation was held on February 26, 1951, at which time Claimant appeared in person and by his, and the Organization's, duly accredited representative. All parties presented evidence and a full and complete hearing was had. Thereafter, on March 2, 1951, the Carrier notified Claimant that after consideration of testimony given at the investigation it was dismissing him from service, effective immediately.

At the outset the Claimant insists Carrier's handling of the investigation resulted in a violation of Rule 20 of the Agreement because it failed to furnish him with a letter stating the precise charge at the time the charge was made as therein required. Although the notice might have been more specific we think it was in substantial compliance with the rule. Claimant was advised in substance that he had been suspended because guilty of conduct unbecoming a Bureau employe, namely trespassing, and that because thereof, as required by the rule, an investigation would be held within the time therein prescribed. Conceding, the term "guilty of conduct unbecoming a Bureau employe" as it appears in the notice might have been too general when Carrier designated "trespassing" as the conduct in question we think that made such letter sufficiently definite to constitute advice to Claimant of the precise charge he was required to defend at the investigation. Moreover, he and his representative appeared at the hearing and participated therein without making any objection to the sufficiency of the notice or asking for a continuance because of surprise. In fact the record makes it appear Claimant was never deceived as to the nature of the charge and that he suffered no prejudice because of any lack of definiteness in the notice. In that situation we believe the Organization's contention the notice was so faulty as to nullify subsequent discipline proceedings held in conformity with the terms of the rule requiring that it be given is hypertechnical and cannot be upheld.

Finally it is argued the evidence adduced at the hearing was insufficient to warrant the Carrier's action. Touching that point it is well to remember and at all times keep in mind the rule, now so well established as to require no citation of the Awards supporting it, under which the sufficiency of the evidence and the propriety of such action must be tested. Briefly stated, it is to the effect this Division will not weigh evidence, it will not substitute its judgment for that of the Carrier if the evidence is substantial, and it will not disturb discipline assessed as a result of a full, fair, and complete hearing unless the record makes it clearly appear the Carrier's action with respect thereto is so arbitrary and capricious as to amount to an abuse of discretion.

It would do Claimant no favor and only burden this Opinion to detail at length the evidence adduced at the investigation. It suffices to say we have carefully examined the record in its entirety and find substantial evidence establishing that on his rest day, February 10th, 1951, Claimant was trespassing on Union Pacific Railroad property, under extremely suspicious circumstances, with full knowledge that he was doing so in violation of company rules. This in our opinion, keeping in mind the nature of the business in which it is engaged, was enough evidence to justify the Carrier's decision Claimant was guilty of the charge made against him and was no longer a desirable or trustworthy employe. Therefore, under the rule to which we have heretofore referred, we have little difficulty in concluding that its findings to that effect and its subsequent action in dismissing him from service cannot be said to have resulted from arbitrary or capricious conduct or from abuse of discretion. It necessarily follows Claimant has failed to establish any sound ground for relief and is not entitled to a sustaining Award.

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 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 record discloses no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of September, 1952.