

Award No. 6006
Docket No. CLX-5899

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Carroll R. Daugherty, 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 Railway Express Agency, Incorporated, and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective October 1, 1940 was violated at the Richmond, Virginia Agency in the treatment accorded W. D. Griffin in dismissing him from service effective August 10, 1948 following an alleged investigation held August 7, 1948;

(b) He shall be restored to service with seniority rights unimpaired and compensated for full salary loss sustained retroactive to and including August 10, 1948.

OPINION OF BOARD: From the record of this case it appears that on July 30, 1948, W. D. Griffin, Vehicleman in the Richmond, Virginia, Agency of the Carrier, was involved in a head-on collision with a Willys truck near a street intersection while operating a Carrier truck. As a result of the collision the Carrier's truck and the Willys truck were rather seriously damaged, and two occupants of the Willys truck suffered personal injuries. An oil truck alongside of which Griffin had driven the Carrier's truck was also slightly damaged. A major reason for the accident lay in Griffin's having drawn alongside the oil truck while both were in motion in the narrow street. As a result of the accident the Carrier became liable for and paid damages and repair costs of several hundred dollars.

On August 6, 1948, after summons and hearing Griffin was fined \$2.50 in police court on the technical charge of following the oil truck too closely.

On August 2, 1948, the general agent of the Carrier requested Griffin to appear for an investigation, which was held August 7, 1948. Griffin was not suspended pending the investigation and the making of a decision. On August 9, 1948, Griffin was notified of his dismissal from Carrier's service. Immediately thereafter the dismissal was appealed by Griffin's Representative through the several steps of the grievance procedure, until on August 31, 1948, the Carrier's General Manager finally denied the claim. Thereupon, on September 7, 1948, the Manager was notified by Griffin's general chairman that the case was to be appealed to Express Board of Adjustment No. 1.

The case was not so appealed, however. The appeal was held in abeyance until October 23, 1951, on which date, after renewed unsuccessful effort to settle the claim on the property, the Third Division of the National Railroad Adjustment Board was notified by the Organization of intention to file claim. It is noteworthy that Express Board of Adjustment was in existence and operation during 1948 and 1949.

The Organization contends that in its handling of the case and in its discipline of Griffin, the Carrier violated the provisions of Article III, especially Rule 29, of the Parties' controlling Agreement, (quoted in the Parties' submissions). The Organization holds specifically that, (1) the charges were not precise; (2) the hearing was not fair and impartial; (3) the Carrier did not sustain its burden of proving that Griffin was to blame for the accident in that the Carrier did not summon witnesses for direct and cross examination; (4) the so-called evidence presented by the Carrier's investigation was based on hearsay and self-serving statements by participants in the accident; (5) the Carrier must have prejudged the case, for it rendered a decision only two days after the hearing; and (6) the Carrier must have regarded the accident as of small importance or as not caused primarily by Griffin, for it did not suspend him pending investigation and decision. These contentions define the issue before us now.

Our study of the circumstances of this case as revealed in the record does not afford compelling support for the Organization's position. First, we think that actually there was some small lack of precision in the charges served on Griffin insofar as some relevant details concerning the time and place of the accident were omitted. But such lack was more apparent than real; Griffin must have known full well what he was charged with, namely careless or negligent driving at the particular time and place. Second, we do not think the Organization has sustained its burden of showing that the investigation and hearing was not fair and complete. Ordinarily, in such a hearing Griffin and his representatives might properly have expected to be faced with witnesses who saw or were participants in the accident and might have expected to be given the opportunity of cross-examining them. But in respect to the instant case it must be remembered that there had been a traffic court proceedings and that consequently most of the facts about the nature of the accident had been established. However, the fact of who was responsible had not been conclusively shown in court. But we think the Carrier's inference that Griffin was chiefly responsible was not an erroneous one. The record shows that Griffin either was trying to pass the oil truck near an intersection or had at least drawn abreast of that truck in a narrow street. If he had not done so, the accident would undoubtedly not have occurred.

There remains the question of whether the discipline imposed by the Carrier was too harsh in terms of Griffin's offense. On this point his past record with the Carrier is admissible. It is not controverted in the record that four previous suspensions (between September, 1946, and March, 1948) had been administered to Griffin, including one for careless, damage-creating operation of a Carrier truck. In the light of these facts we do not deem the Carrier's action was unfair.

We find, then, in the record of this case no compelling reason for overturning the Carrier's decision. We do not judge that the Carrier abused its discretion by acting in an arbitrary, capricious, or inequitable fashion.

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 Carrier did not violate 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 18th day of November, 1952.