

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

**CHARLESTON & WESTERN CAROLINA RAILWAY
COMPANY**

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

(1) The Agreement governing the hours of service and working conditions between the parties was violated by the Carrier at Spartanburg, South Carolina, on September 7, 1951, in the treatment accorded Warehouse Foreman Ned A. Bishop in dismissing him from the service, and

(2) That he shall be restored to service with all rights unimpaired and compensated for wage loss sustained beginning September 7, 1951, and subsequent thereto until restored to service.

OPINION OF BOARD: There is in evidence an Agreement between the parties bearing effective date of September 24, 1926, amended September 1, 1949. Claimant was assigned to the position of Warehouse Foreman, Spartanburg, South Carolina, with a seniority date of March 16, 1939. Claimant was verbally advised on September 7, 1951, by G. W. Harvley, Freight Agent, that he was being held out of service for insubordination. Investigation was held on September 13, 1951, and claimant was notified on September 18, 1951, that he was dismissed from service as of September 7, 1951.

The Organization contends that the Carrier violated the terms of the effective Agreement in dismissing this claimant from the service and requests that he be restored to service with seniority unimpaired and be reimbursed for monetary loss.

The Organization contends that the charge of "insubordination" without reference to circumstances, place, or date, does not fulfill the requirements contemplated by Rule 30 of the effective Agreement.

Rule 30 reads as follows:

"INVESTIGATION. An employe who has been in the service more than sixty (60) days or whose application has been formally approved shall not be disciplined or dismissed without investigation, at which investigation he may be represented by an employe of his choice. He may, however, be held out of service pending such

investigation. The investigation shall be held within seven (7) days of the date when charged with the offense or held from the service. A decision will be rendered within seven (7) days after the completion of the investigation."

Under this rule the bare charge of insubordination is sufficient. The rule does not contain words such as "precise," "specific," "actual," etc. Moreover, under this rule no written charge is mandatory. Moreover, when a claimant proceeds with a hearing without objection, he waives any rights he might have had under a rule that required precise charges.

The Organization complains of the statement of Agent Harvley read at the hearing, to which he answered "Yes, sir" to the question "Is this your statement, Mr. Harvley?" because it was not furnished the Employees. The Agent was present at the hearing and was subject to any cross examination by the claimant or his representatives. It is not similar to statements given by persons who are not present at the hearing, and the right to cross examine and be confronted by the witness, or witnesses, are denied the accused. Therefore, the Awards cited by the Organization deciding that question are not to be considered here.

The record shows that the claimant objected to the Chief Clerk, Mr. Spires, telling him on August 24, 1951, that his work was being observed and that he was not doing his work properly. The claimant states that the Chief Clerk told him that word had come from Augusta concerning the Foreman's work. The Chief Clerk denies this, saying he wanted to warn the claimant that the Agent had been watching his work and that he had asked the Agent for permission to warn the claimant rather than have the claimant called in by the Agent. That after warning the claimant concerning the manner in which he was doing his work, the claimant got very mad and said that anyone who had made a statement that he was not working as he should was a "damn liar," and that he would talk to the Agent about the matter. This conversation was reported by the Chief Clerk to the Agent. The Agent waited for the claimant to talk to him about the conversation concerning his work that was had with the Chief Clerk. Nothing happened until Thursday morning, September 6, 1951, fourteen days later, when claimant met Agent Harvley and talked to him concerning two extra truckers who had reported for duty without the knowledge of the claimant. An argument resulted concerning this happening and the matter of the conversation with the Chief Clerk concerning claimant's work was reopened. Later the claimant was called into the Agent's office and the Chief Clerk was present. The claimant at that time informed the Agent and the Chief Clerk that he did not like the Chief Clerk's "pimping" on him. The claimant was then told to get his men started to work. The following morning the Agent talked to the claimant in the presence of the Chief Clerk and asked him if he had not had plenty of time to give consideration to the manner in which he had spoken to the Agent on the previous day and asked him if he were given another opportunity, what assurance he would give that he would make an improvement. There is a conflict in the testimony as to what was said at this meeting by the parties. However, the claimant was notified by the Agent that he was being held out of service for insubordination.

From a very careful reading of the evidence relating to what happened on the 24th day of August, 1951, the 6th and 7th days of September, 1951, it is indicated that the claimant was guilty of the charge of insubordination and that when he had a chance to reconsider his remarks he declined to do so. Only after he was notified that he was being held out of service did he reconsider and ask for another chance.

This claimant had twelve years' seniority and it should have been taken into consideration by the Carrier when it assessed the discipline; also, the insubordination as brought out by the evidence given at the hearing was not of such a degree as to warrant dismissal. The discipline ordered by the Carrier was harsh and excessive as there is no evidence of previous disci-

pline being meted out to this claimant. A sixty day suspension would be in line with the degree of insubordination as proved by the Carrier.

Claimant will be restored to service as of November 7, 1951, with seniority rights unimpaired and the monetary loss suffered be paid, less amounts earned in other employment.

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

The discipline assessed was too harsh and excessive.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of January, 1953.