

Award No. 6130
Docket No. CLX-5933

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul G. Jasper, 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, Inc., and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, effective September 1, 1949, was violated at Memphis, Tennessee in the treatment accorded H. D. Caldwell in assessing discipline as the result of an alleged investigation conducted November 6, 1950, and

(b) The ten (10) demerits assessed as penalty shall be removed and his record cleared of the charge.

OPINION OF BOARD: On October 25, 1950, claimant was called to perform guard service for a shipment of gold bullion, moving from Memphis, Tennessee, to Carbondale, Illinois. The claimant was instructed and armed with a shotgun as protection.

When the train arrived at North Cairo, Illinois, a representative of the Prevention and Security Department entered the car to observe the transfer of the shipment from one messenger to another. The representative observed the claimant several feet away from his shotgun. The claimant was standing at the left rear door of the car, with the door open. His shotgun was standing back of the right front door of the car. The gun was not immediately available to him in case of emergency.

The claimant was an employe with 18 years' service, 10 of which he served as a messenger.

The claimant was notified by letter, dated October 30, 1950, that he was being charged with failure to properly perform his duties as a guard for the gold shipment. The investigation of the charges was set for 2:00 P.M. on November 3, 1950. The investigation was held November 6, 1950, and claimant was found guilty. He was assessed 10 demerits against his record.

From a transcript of the record, we find that the claimant was afforded a fair and impartial investigation under the rules.

There is substantial evidence of probative value to sustain the charge that the claimant's shotgun was "not immediately available in case of emergency." He was not properly performing his duties as a guard. He therefore was subject to discipline.

We have further examined the record for the purpose of establishing whether or not the carrier was arbitrary, capricious, or unreasonable in the assessing of the 10 demerits.

From all of the facts there is nothing to show that the carrier abused its discretion in assessing the discipline of 10 demerits against the claimant. The discipline assessed was not arbitrary, capricious, or unreasonable.

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 Agreement was not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 13th day of March, 1953.