

Award No. 6226

Docket No. CL-6307

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

THE UNION TERMINAL COMPANY—(Dallas, Texas)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that—

(1) The Carrier (The Union Terminal Company) violated the agreement extant between the parties when the Vice-President and General Manager, (the highest Officer designated by the Carrier for the purposes of the Railway Labor Act) rendered a decision in the matter of the dismissal of Mr. G. E. Shaver, Mail and Baggage Foreman, without having "heard" the case and prior to a decision having been made by the examining official; and prior to an appeal having been made to him by the employe or his representatives, and

(2) As the result of this illegal and unauthorized action, the rights to a hearing and appeal to the highest officer designated by the Carrier for such purposes was nullified and denied, and

(3) Because a decision was not made by the examining official, and further because jurisdiction of the case was prematurely assumed by the Vice-President and General Manager, it follows, that the employe, Mr. G. E. Shaver was denied a full, complete and impartial investigation and hearing, in all that the term implies, and he is therefore entitled to be reinstated to service of The Union Terminal Company and paid for all time lost from May 5, 1952.

OPINION OF BOARD: This is a discipline case brought to the Board by the Organization for alleged violation of Rule 27—"Discipline and Grievances" of the current Agreement between the parties, as set out in the Statement of Claim; see Page 1 record, and also underscored statement of the Organization, page 16 of record as follows:

"THIS CASE IS NOT SUBMITTED TO THE THIRD DIVISION OF THE NATIONAL RAILROAD ADJUSTMENT BOARD ON THE MERITS OF THE DISMISSAL. IT IS SUBMITTED FOR

**THE PURPOSE OF ENFORCING DUE PROCESS UNDER THE
TERMS OF THE AGREEMENT."**

Therefore, the only issue for us to determine according to the record is,

"Did the Carrier properly progress this matter in compliance with the provisions of the Agreement?"

The Organization contends Carrier did not comply with the provisions of Rule 27, nor did it follow past practice and custom in discipline cases as heretofore progressed on the property.

The record discloses that the employee G. E. Shaver, was employed as Mail and Baggage Foreman at Dallas, Texas on April 18, 1952 and prior thereto. That on April 18, 1952, Carrier contends that as a result of certain acts by Shaver, a number of sacks of mail were left by Missouri-Kansas-Texas Train No. 5. That it is agreed by the parties that Shaver worked under G. A. Snell, General Baggage Agent, who was his superior, in the performing of his work for Carrier. The record further discloses that on April 21, 1952, Shaver was notified by letter, of the charge made against him, this letter being signed on behalf of the Carrier by J. C. Lumpkin, who is identified as Assistant to the Vice President and General Manager. Hearing on Investigation was set for April 24, 1952 at 10:00 A.M., but after notice to the employee, the hearing actually took place on April 28, 1952, and was properly conducted in all respects by Mr. Lumpkin. Within the ten (10) day limit, prescribed by Rule No. 27 following the Investigation, the employee received notice under date of May 5, 1952, of his dismissal from the Carrier's service. The notice of dismissal was signed by J. E. Newton, who is identified as Vice President and General Manager and since August 16, 1951, was designated as Chief Operating Officer of the Carrier to handle matters arising under Agreement between the Carrier and the Organization.

The Organization contends that the manner above described is improper under Rule No. 27, in that the charge as made against Shaver, was not made by his superior, but in fact was signed by J. C. Lumpkin, who also conducted the Investigation. From this point on the Organization contends, according to past practice and custom, the dismissal notice of May 5, 1952, was signed by J. E. Newton, the Chief Operating Officer designated by the Carrier to handle these matters, and therefore, the employee Shaver has been deprived of his rights given him by the Agreement, in that he would have no proper party designated by the Carrier to perfect an appeal as provided by the Agreement, Rule No. 27, since J. C. Lumpkin conducted the Investigation for Carrier, but who did not notify the employee of his dismissal, nor of the results of the Investigation. The Carrier, by its action brought about by its decision as to the Investigation and the dismissal of the employee, have deprived him of right of appeal, as provided by Rule No. 27. This procedure by Carrier is not according to usual custom and practice, as stated by the Organization and not denied by Carrier. Carrier contends the result would have been the same had the matter been handled in the usual manner and that claim should be denied since Shaver did not appeal as provided by the Agreement. Such position is speculative.

We are of the opinion that the employee was deprived of his rights by the Carrier, for the following reasons:

1. Carrier by its action, disregarded past practice and custom, in its failure to have the officer conducting the Investigation notify the employee of the decision and dismissal.
2. That Carrier, by its action, in having its Chief Operating Officer, notify the employee of the decision and dismissal, thereby depriving him of his right of appeal, as provided in the Agreement violated the spirit and intent of the Agreement.

We hold that the Chief Operating Officer, being the highest officer designated by Carrier, having already notified the employe of his decision, and dismissal of the employe, has precluded this claimant from exercising his existing rights under the Agreement. It is not reasonable to assume that the Chief Operating Officer can determine an appeal from his own decision.

We have been cited many awards by the parties, but after diligent search we must agree with the principals as set out in Awards Nos. 4747 and 6087 and conclude that Carrier has violated the Agreement.

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

Carrier has deprived the employe of his rights as alleged, and as such has violated the Agreement.

AWARD

Claim sustained, but Carrier is entitled to credit for any amounts earned in an outside occupation, less time lost through sickness or other allowable deductions.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of June, 1953.