

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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 & Station Employees, effective September 1, 1949, was violated at New Orleans, Louisiana, August 27 to 31, 1951 in the treatment accorded Josephine Sophie Weser in assessing discipline as the result of an alleged investigation conducted 10:30 A.M., August 29, 1951;

(b) She shall now be compensated for salary loss sustained as a result of being withheld from service on August 27-28-29-30-31, 1951, at the rate of \$282.24 basic per month; and

(c) Her personal record shall be cleared of the charge and penalty here involved.

OPINION OF BOARD: This is a discipline matter. Claimant here, Josephine Sophie Weser was relieved from service shortly after midday on August 27, 1951, allegedly being guilty of failure to comply with instructions of her supervisor in violation of Rule 824, General Rules and Instructions.

Claim is here made for reimbursement for salary loss sustained for being withheld from service on August 27, 28, 29, 30, 31, 1951 and that her personnel record be cleared of the charge and penalty imposed.

Claimant here, a regularly assigned stenographer, in the General Agent's Office, New Orleans, Louisiana, under date of August 27, 1951, received notice that an investigation would be held on August 29, 1951 on the following charge:

"You are charged with refusing to comply with instructions of Chief Clerk Poupart to relieve the Telephone Operator for her meal period of twenty minutes. You were instructed at 12:30 P.M. and again at 1:30 P.M. August 27, 1951. You refused to comply which is in violation of Rule 824 of the General Rules and Instructions which reads as follows:

IN ALL ORDINARY MATTERS PERTAINING TO
THE BUSINESS OF THE COMPANY AND THE INTER-

PRETATION OF ITS RULES, EMPLOYEES MUST OBEY INSTRUCTIONS OF THEIR SUPERVISOR. FAILURE TO COMPLY WITH INSTRUCTIONS OR THE DISREGARD FOR AUTHORITY WILL BE CONSIDERED AS AN ACTION OF INSUBORDINATION.'

"In accordance with the agreement covering hours of service and working conditions between the Railway Express Agency and employes thereof represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, you may be represented by an employe of your choice or a duly-accredited representative."

Subsequent to the investigation, that is on September 4, 1951 claimant was advised as follows:

"Referring to the Minutes of Investigation held in your case on August 29th, 1951, in connection with your refusal to comply with instructions from your superior officer—

"The facts developed during the investigation reflects that charges are sustained, and that your failure to comply with instructions of your Superior Officer was entirely uncalled for and constituted 'Insubordination'. However, in view of your past record, and the thought that you will avoid such circumstances in the future, you may return to work on your regular assignment, Tuesday, Sept. 4th, 1951, with suspension of four days with loss of pay, i.e., August 28th through August 31st, 1951."

The Organization asserts that claimant was under no contractual obligation to relieve the telephone operator (there being no emergency) since she held assignment as a stenographer; that she had shown her willingness to be of full service to her employer by acting in relief of the telephone operator on days prior to the time in question; that she could not be properly charged with insubordination (failure to comply with instructions of her supervisor) inasmuch as she had previously asked to be relieved of the telephone duties in question; and finally that she had not been given a fair and impartial hearing within the meaning of Rule 29 which reads as follows:

"An employe who has been in the service more than ninety (90) 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 or duly accredited representative. He may, however, be held out of service pending such investigation. He shall have at least twenty-four (24) hours advance notice of such investigation and shall be immediately apprised in writing of the precise charge against him. The investigation shall be held within seven (7) days of the date when charged with the offense or held out of service. A written decision will be rendered within seven (7) days after completion of investigation.

"Note: The management agrees that in its instructions respecting this rule, it will advise that the suspension feature of the rule is permissive and not mandatory, and is not expected to be invoked where trivial offenses or minor infractions of rules are involved."

in that claimant was improperly suspended prior to the investigation. Objection is likewise directed by the Organization to the manner in which this investigation was held in that the Respondent's officer acted as both prosecutor and judge.

This Board stated in Award 4840:

"* * * It must be borne in mind that the conduct of a hearing in a disciplinary proceeding does not require an adherence to all

the attributes of a trial of a criminal proceeding in the courts. Prior to the advent of collective agreements, management could hire and fire, or otherwise discipline employees, without reason and without cause. This prerogative has been limited by contract and it is the enforcement of these limiting contractual provisions with which we are here concerned. In other words, the Carrier must show that it acted upon evidence that warranted the application of discipline or, stated inversely, it must show that it did not act unreasonably or arbitrarily. The Carrier's trial officer represents it in making this determination. It is not a case of the trial officer being both prosecutor and judge, it is a matter of contract compliance in which the trial officer interprets the Agreement in the light of the evidence in the first instance. * * *

While we subscribe to the principle therein laid down and here reiterate our adherence thereto; the facts of record here have at least one distinguishing circumstance. G. P. Poupart, the Chief Clerk, was claimant's immediate supervisor. The instructions which the claimant is charged with failing and refusing to follow were his. He sent claimant home in midafternoon on August 27, 1951. The notice of hearing was prepared by him. He presented the Respondent's case and acted as hearing officer as well as making the discipline decision here complained of. Mr. Poupart likewise gave testimony. His testimony was not corroborated. He was the only witness.

It is unquestioned that claimant was entitled to a full, fair and impartial hearing.

The hearing officer here was passing upon his own credibility as a witness and the weight to be given his own testimony.

This is highly improper. It cannot be said that under the circumstances the claimant was given a full, fair and impartial hearing to which she was entitled to receive and the Respondent obligated to provide.

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 Employee 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 claimant was not given a full, fair and impartial hearing, as required and that she should be compensated for all salary loss sustained on August 27, 28, 29, 30 and 31, 1951 and that her personnel records be cleared of this charge and penalty.

AWARD

Claim (a), (b) and (c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1953.