

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

Mr. D. F. Martin, Ticket Clerk, Jackson, Mississippi, be reinstated in the service of the Carrier with all rights unimpaired, and compensated for all monetary loss sustained dating from October 12, 1950.

OPINION OF BOARD: This is a discipline case concerning one D. F. Martin, Ticket Clerk, Jackson, Mississippi.

Under date of October 9, 1950, Notice of charge and investigation was given, such Notice reading as follows:

"Investigation of your concern in the issuing of improper change to passengers at the Jackson Passenger Station Ticket Office, September 30 and October 7, will be held in my office at 9:00 A. M., Thursday, October 12, 1950."

Following the investigation Claimant was formally notified that he had been found guilty of the charges, as brought, and that he stood dismissed from service. This decision was appealed up to the Carrier's highest designated officer, the Manager of Personnel, and is presently before this Board for final adjudication.

Claimant seeks reinstatement with all contractual rights unimpaired and pay for all time lost.

The record indicates that the basis of the charges was the alleged issuance of improper change to ticket purchasers on five occasions on September 30, 1950 and October 7, 1950. Respondent produced three different witnesses at the hearing, each of them a Carrier investigator, each of whom testified that he had been given improper change. One incident involved 10 cents, and four other incidents each involved 30 cents, a total of \$1.30.

It is well established by Awards of this Board that a disciplinary action of a Carrier will not be disturbed if (1) substantial evidence of probative value is adduced at the investigation, (2) the investigation rules have been followed, (3) the action of the Carrier is neither arbitrary or capricious, and (4) the penalty is neither excessive nor unreasonable. Likewise, this Board has held that it may under meritorious circumstances grant leniency to an individual, even in cases where his guilt of charges brought is conclusive.

There is nothing in the record to indicate that the investigation was other than full and impartial; likewise, there is nothing therein to substantiate a charge or sustain a finding of arbitrary action by the Respondent. As was stated in Award 6297, we conclude that:

"There is substantial evidence of record that indicates a pattern of irregularities so constant and repetitious as to preclude a conclusion that the same were accidental or occurred in due course of handling the Carrier's business."

This being true there are no grounds to sustain a request that the penalty imposed be found wholly unwarranted. Thus we are now here confronted with the question of whether leniency is in any wise justified.

The record discloses that in handling this matter on the property the Carrier had agreed to reinstate Claimant with seniority unimpaired, and without pay for time lost, provided that such reinstatement be limited to his right to displace on any non-bonded position which may have been bulletined since he was taken out of service. The record is replete with statements from fellow workers and private individuals (other than employees) as to the good qualities possessed by Claimant; his long years of service; and prior devotion to duty.

While we subscribe to the principle that an offer of settlement is not binding on the party who makes it, we are of the opinion that here, Respondent, in making the offer, properly evaluated the degree of discipline that should apply. This factor, together with other extenuating and mitigating facts of record (of which the Respondent undoubtedly took cognizance) lead us to conclude, and we so find and hold, that Claimant should be reinstated, with seniority unimpaired, but without pay for time lost but with future service limited (unless the Respondent should otherwise later determine) to the right to displace on any non-bonded position which may have been bulletined since he (the Claimant) has been out of service.

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 continued penalty of absolute discharge is excessive, and that the Claimant should be reinstated, with seniority unimpaired, without pay for time lost, but with service limited (unless the Respondent should otherwise later determine) to the right to displace on any non-bonded position which may have been bulletined since he (the Claimant) has been out of service.

AWARD

Claim disposed of in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of September, 1953.