

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT & TERMINAL RAILWAY COMPANY

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

(a) The Carrier violated the Clerks' Agreement at Houston, Texas, when, in August 1952, it suspended Stevedore A. Nowlin for a period of ten (10) working days. Also

(b) Claim that the Carrier's action was arbitrary, without just cause and an abuse of discretion. Also

(c) Claim that Stevedore Nowlin be compensated the exact amount of his losses.

OPINION OF BOARD: This is a discipline case involving suspension of Stevedore A. Nowlin for a period of ten days, and claim is made for monetary loss resulting from such suspension.

Claimant has a seniority date of July 28, 1922 on Carrier's roster and was suspended by Carrier on August 21, 1952 on charges preferred by Carrier, as follows:

"(a) Refusal to comply with instructions.

(b) Insubordination to your superior in the organization and you are hereby charged accordingly."

The record discloses that Claimant was employed by Carrier as a Stevedore at Settegast Freight Station, Houston, Texas; that his immediate foreman was one I. J. Cleboski; that on August 15, 1952 Carrier issued its Bulletin #1, covering Instructions to Stevedores, and it is admitted Claimant received a copy of said Bulletin from Carrier. At the bottom of said Bulletin it contained the following:

"Read the above instructions carefully after which acknowledge receipt and understanding on portion provided below.

R. R. Warren,
Agent."

"Mr. R. R. Warren, Agent.

This will acknowledge receipt and understanding of your Bulletin No. 1, dated August 15, 1952, containing instructions to stevedores.

Stevedore Position No. _____"

The record shows that on August 20, 1952 Mr. Warren, Agent, requested I. J. Cleboski, foreman, to get acknowledgements from all of the men who had not already signed receipts. Cleboski testified at the investigation he took copies to the employees and **told** those who would not sign to see Mr. Warren. He also testified that Warren had stated to him he (Warren) did not want any of the men to sign unless they understood it.

Carrier contends the Claimant has refused to sign receipt for the bulletin, and also that he was guilty of insubordination.

We have made a careful review of the entire record in this cause, and nowhere is there any evidence that will bear out the contention of Carrier that the employee **refused** to sign the receipt for the Bulletin.

From the wording of the Bulletin and the remarks made by Mr. Warren, Agent, to Mr. Cleboski, he requested the men to understand the Bulletin before signing the receipt. We call attention to the record that no time limit was set for signing the receipt by the employees, bearing the signature of Warren, on the Bulletin.

While we agree with many Awards of this Division that this Board will not substitute its judgment for that of Management in the field of discipline cases generally, we are of the opinion that the Carrier, through its Agent Warren, has entirely disregarded the rights of the Claimant in ordering his suspension on the ground, and for the reason, that Carrier has utterly failed to substantiate the charges preferred against the Claimant by its failure to make any showing Claimant has refused to sign the receipt, and the failure of Warren to explain the meaning of the Bulletin. Instead, Claimant, with other employees, was ordered off the docks of Carrier and suspended without provocation.

Carrier has arbitrarily, and without just cause, violated the Agreement between the parties, by causing the suspension of Claimant, and Claimant is entitled to a sustaining Award for all monetary loss resulting from such suspension, except Carrier shall be allowed credit for any earnings received during such period of suspension, from outside employers.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employees involved in this dispute are respectfully 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 Carrier has violated the Agreement and claim should be sustained.

AWARD

Claim sustained in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1953.