

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

KENTUCKY & INDIANA TERMINAL RAILROAD COMPANY

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

(a) The dismissal from service of Otis B. Huddleston was neither warranted nor justified.

(b) He be restored to his former position as janitor and laborer with seniority, and all other rights, unimpaired.

(c) Otis B. Huddleston be paid at the rates of the position he last filled for every day lost retroactive to September 30, 1952, to date he is restored to service.

OPINION OF BOARD: This is a discipline case. Claimant Otis B. Huddleston was dismissed from service on September 30, 1952 following an investigation. The charge being that he had made written requests for free transportation for his wife, stating therein that she was unemployed, when as a matter of fact, she was employed as a school teacher at Louisville Public School.

Petitioners contend that the investigation was not conducted in accordance with the rules governing such proceedings and was therefore prejudicial to Claimant's rights, citing Rules 26 and 27 of the Agreement, alleging Carrier's Storekeeper extracted from Claimant a written admission and signed statement to the effect that he had done what Carrier's officials verbally accused him of doing, namely, requesting transportation for his wife while she was employed. This incident occurring some ten days prior to the investigation of September 26, 1952 and that it was on this evidence alone that Claimant was dismissed, citing Award 4295, on the theory that a fair trial was not given Claimant. Also, that the investigation of September 26, 1952 was not an impartial hearing, that it lacked proper formality, being perfunctory only in its nature, and citing Awards 6213, 6226 and 6254, in support thereof.

On behalf of Respondent Carrier it is contended that this claim should be dismissed, as it was not appealed within a reasonable time; that it should be denied, as there was an admitted violation of Rule 42-B; also, that the

written charge made prior to the investigation of September 26, 1952 is clear and unambiguous and finally, that there is no evidence that Claimant's rights were in any way prejudiced, citing Award 5370.

In considering the entire record, citation of rules of the Agreement and Awards, it is our conclusion that this claim should be denied for the following reasons:

Claimant admitted the misrepresentation in requests for transportation and stated that the same had occurred on several previous occasions. On this basis we consider the action taken by Carrier to be justified.

In the matter of the hearing, we find a substantial compliance with the rules cited on investigation procedure. Award 4295 cited by Petitioners presents an entirely different situation; there the employe accused of wrongdoing was given no opportunity to question the person making the charge; here, dismissal is based on an admission of wrong-doing on the part of Claimant covering a period of several years.

On the matter of conducting an investigation hearing, relative to formality, the giving of notice, as to contents, and general procedure governing the same, see Award 4840. We find no prejudice to Claimant's rights in this case.

On the jurisdictional question raised, we do not deem it necessary to go into the matter, in view of the finding above made.

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

That there was no violation of the rules of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of January, 1955.