

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

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

CAMAS PRAIRIE RAILROAD COMPANY

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

(a) The Carrier violated the rules and intent of the Clerks' Agreement with the Carrier when on March 28, 1953, it dismissed from service Mr. Roy L. Miles, Depot Ticket Agent, Camas Prairie Railroad, Lewiston, Idaho, as a result of an investigation held on March 19, 1953, and

(b) That Mr. Roy L. Miles be restored to service with seniority unimpaired and compensated for net wage loss from April 19, 1953 to date he is returned to service.

OPINION OF BOARD: On March 16, 1953, Claimant was charged by Carrier

"with violation of Rule 950 of the Consolidated Code of Operating Rules and General Instructions. Specifically, that report of special examination of Traveling Auditors has disclosed payroll irregularities involving the Lewiston Passenger Station of the Camas Prairie Railroad Company, which is under your supervision."

Investigation was held on March 19, 1953, and subsequently Claimant was discharged. He claims that the charge against him was not substantiated by evidence at the investigation and asks for reinstatement and back pay.

Considering the record in its most favorable aspect to Claimant, it is still undeniably true that he carried his son-in-law, Vearl Moore, and his daughter, Mrs. B. M. Moore, on the Carrier's payroll for days on which they did not work. He admitted this at the investigation. It is also admitted by the Organization in its Reply to Carrier's Submission in this case that such conduct is contrary to Rule 950. However, it is contended that there was no intent to defraud the Carrier and that Carrier in fact did not lose a cent; and, in addition, it is contended that Claimant engaged in these irregularities with the knowledge and consent and at the direction of the General Manager of the railroad, whose orders he was bound to obey.

As to the first contention, the explanations as to why the irregularities were engaged in, particularly as to Mrs. B. M. Moore, are far from clear and we would hesitate to change Carrier's conclusion on this question if it were at issue. But Carrier's action does not appear to be based upon a conclusion that there was a monetary loss; the irregularities themselves—with or with-

out loss—constitute the alleged offense and there is ample evidence, in addition to Claimant's admissions, to support a finding that the irregularities did occur.

As to the second contention, which is the primary basis for the claim, there is a conflict of evidence; Claimant's testimony is to the effect that the General Manager instructed him to engage in the payroll irregularities, and that he did so with the General Manager's full knowledge and consent. There is some supporting evidence to the effect that the General Manager agreed to the irregularities as to Mrs. Moore. On the other hand, Carrier submitted a statement from the General Manager that he had no knowledge whatsoever of the irregularities, and that Claimant exercised the entire supervision over the ticket office.

No awards of this Board are cited by Claimant in support of his argument that an employee should be excused for improper conduct when he engaged in such conduct at the direction of an official of the Carrier. Nevertheless, we can conceive of situations where such an argument may have validity; for example, where an employee has acted at the direct order of an official, against his own will and over his own protest, and under threat of disciplinary action if he refuses, it may well be that the Carrier will be estopped from disciplining him for such conduct. However, we do not think the argument is persuasive on the facts of this case.

Here, there is no indication that Claimant had any objection or protested against falsifying the records. Without attempting to resolve the conflicting evidence, we have no doubt that on the record as a whole, including the relationship between Claimant and the two Moores, there is substantial evidence upon which Carrier could conclude that Claimant and not the General Manager conceived the idea of the irregular entries, or at least that they engaged in the irregularities jointly. On such a state of facts, we think that Claimant must bear the consequences of his own wrongdoing, even though it was with the knowledge and consent of the General Manager.

In the argument of the case before the referee, two additional grounds were put forward in support of the claim, both alleging procedural irregularities under Rule 55 of the Agreement. We have considered these contentions and we find that Claimant was afforded a full and fair hearing and all other safeguards contemplated by the rule. Since Carrier's conclusion of Claimant's guilt is supported by substantial evidence, and there is no other basis for disturbing its action in this case, we will deny the claim.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 1st day of October, 1956.