

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

(1) The Carrier violated the Clerks' Agreement of December 1, 1956, between the parties when, as result of a faulty investigation held on March 25, 1957, it dismissed Chief Clerk Cecil H. Pittman, Chief Engineer's Office, Savannah, Georgia, from its service, and that therefore,

(2) Chief Clerk Cecil H. Pittman's record be cleared and he be restored to service with all rights unimpaired and compensated for all time lost since his unjustified removal from the service on March 19, 1957.

OPINION OF BOARD: Claimant, Cecil H. Pittman, 66 years of age at the time, was Chief Clerk in the office of the Chief Engineer, Mr. J. B. McKerley, at Savannah, Georgia, on the Central of Georgia Railway Company. He had over fifty years of service dating from 1905. The office was apparently a large one, supervised by the Chief Engineer. Claimant's supervision included five or six clerks among whom was one Mrs. Ira E. Tillman, whose husband had been formerly married to Claimant Pittman's daughter. Other employees, such as engineers, land agents, etc., worked in the same general office, answerable to Chief Engineer McKerley, but not in the chain of command of Claimant Pittman.

There had been a constant wrangle between Chief Clerk Pittman and Mrs. Ira E. Tillman over personal matters. Both Pittman and Tillman had been warned to keep personal matters out of company business and off company time. It is apparent that Chief Clerk Pittman was all business, had grown old in service of the company, and gave his work full attention. Because of his personal knowledge of Mrs. Tillman, his junior employe (said knowledge being through her marriage to his daughter's former husband), he apparently knew far more of her needs and affairs than a supervisor ordinarily would.

Immediately prior to Monday, March 18, 1957, Mrs. Tillman had reported in sick. On Wednesday, March 13th, her daughter had called Pittman saying her Mother was ill and would not be in. On Thursday Mrs. Tillman called Pittman, saying she had to see another doctor and would not be in. She further informed Pittman that she wanted to take care of some matters at the Board of Education in regard to her children. On Friday Mrs. Tillman came in to work, but on finding Mr. McKerley was not going to be in the office that day, told Mr. Pittman:

"I told him I didn't feel like I could stay here under tension on Friday and that I would come back when Mr. McKerley came back."
(Employee's Exhibit No. 1, Docket page 15.)

On Monday, March 18, 1957, Mrs. Tillman returned to work, and worked all morning. Her testimony is that Mr. Pittman put more work on her desk than she could do in a week. In the early afternoon she asked Mr. McKerley if she could talk to him, and was told that time would be available later in the afternoon. Mrs. Tillman claimed she was sick, nervous, and upset, and had been sick the previous week. Mr. Pittman, because of his personal knowledge of her outside activities, believed she had been malingering but had taken no action, other than to ask for a doctor's report as to her sickness. He discussed this with Mr. McKerley, and asked to be present when his subordinate, Mrs. Tillman, had the interview, which request was granted.

After requesting a meeting with Mr. McKerley, Mrs. Tillman then telephoned Mr. Howard (the Clerks' local Chairman), and her husband, Mr. Tillman, and asked them both to come over. The stage was set for a beautiful Donny-Brook. All that was lacking was some one to sell tickets, but they were not lacking for spectators.

Shortly thereafter Mr. McKerley told Mr. Pittman he was ready for the meeting. Mr. Pittman summoned Mrs. Tillman to come in, and about the same time Mr. Howard arrived. Mrs. Tillman began her accusations against Mr. Pittman. He responded as to her malingering. Mrs. Tillman then picked up a ruler and whacked Mr. Pittman over the head with it, knocking off his glasses, and he grappled with her. As soon as they were separated Mr. Tillman came in, and put on an encore with Mr. Pittman, but they were separated without mayhem being committed. In the melee Mr. Pittman had picked up a paper weight, but had not hit any one with it.

So much for facts, and now let us examine the merits. Both Mr. Pittman and Mrs. Tillman were discharged. Mr. Pittman's job as Chief Clerk was not to win a popularity contest, but to serve the Railroad. This he did ably and well, as shown by his fifty years of service. The record discloses that others in the general office interfered with his service to the Railroad by heckling his efforts to enforce discipline over those he supervised, one of whom was Mrs. Tillman. Mr. Adams, the land agent, was anything but cooperative, except he was most willing to carry on an altercation with Pittman immediately after the main event in McKerley's office.

The office was very loosely run. One troublemaker, Mrs. Tillman, had been able to enlist the sympathies of others. These were not in the chain of command of her immediate supervisor, and he was powerless to do anything about it. Senior supervision took no steps to correct the situation. When the inevitable eruption came in McKerley's office, it was precipitated by Pittman being slapped with a ruler and enhanced by the presence of Mr. Tillman. Pittman was responsible for neither of these things. Considerable

mention had been made of Mr. Pittman at one time or another during the Donny-Brook picking up paper weights as weapons. It may or may not have been his intention to hit some one with these. It is doubtful that he would. He is entitled to the presumption of innocence. He was 66 years of age, and being attacked by a woman young enough to be his daughter. Little wonder he looked for a means of self preservation. Under the circumstances, and in the absence of actual use, the testimony has no significance.

The specific charges are two in number, and in essence are as follows:

1. Violation of personal instructions not to mention personal differences, the violation occurring in Mr. McKerley's office March 18, 1957.
2. Violation of the Company's rules of conduct without specific date.

As to charge one, it in itself, is hardly grounds for dismissal. The testimony shows that Chief Clerk Pittman was distrustful of the repeated requests for absence because of illness. Because of his knowledge of Mrs. Tillman's personal affairs and those of Mr. Tillman, he had reason to doubt the formal reasons stated for the absences. There was cause to bring these matters into the open.

As to charge two, no date being given, it must be coupled with charge one as to date, time and place (Mr. McKerley's office, 4:30 P.M. March 18, 1957). At that time Mr. Pittman was attacked twice, once by Mrs. Tillman, and once by Mr. Tillman. The testimony shows he did nothing more than defend himself.

The question has been raised that there was a faulty investigation. While the matter has been disposed of on the merits, this problem should be disposed of. The facts disclose that Chief Engineer McKerley preferred the charges, and that subsequently an investigation took place on March 25, 1957 with Mr. H. W. Waters, General Superintendent of Transportation, presiding. Thereafter, on March 28, 1957 Mr. McKerley wrote a letter to the parties enclosing a copy of the transcript of testimony, which read:

"Referring to my letter to you of March 19, 1957, and, pursuant thereto, formal investigation held in this office beginning at 10:00 A.M. on Monday, March 25, 1957:

You are hereby dismissed from the service of this Company.

A copy of transcript of the formal investigation is hereto attached."

It is charged that the hearing officer, Mr. Waters, not having rendered the finding of the investigation, but that instead it was rendered by Mr. McKerley, the chief complainant, the investigation was faulty. The facts do not sustain the contention. There is no evidence that the hearing officer, Mr. Waters, did not render the decision as to whether the charges were proved, and fix the penalty. Subsequent to Mr. McKerley's letter of March 28, 1957, letters were written by the organization on April 6, 1957, and August 6, 1957, and this claim of "faulty investigation" was not raised. Only on submission of the ex parte on September 20, 1957 did the question arise. The failure to raise the claim on the property and properly dispose of it when the information needed was available, bars the claim at this time.

The claim will be allowed. Chief Clerk Cecil H. Pittman should be restored to service with all rights unimpaired, and compensated for all time lost since March 19, 1957, less amounts earned in the interim.

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 Employee 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 Carrier violated the agreement.

AWARD

Claim sustained in accord with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1958.