

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

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

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

- (1) Baggage Clerk M. W. Mackey, Pensacola, Florida, be restored to service with seniority and all other rights unimpaired.
- (2) Clerk Mackey be compensated for October 17, 1957, and each subsequent date until he is restored to service.

OPINION OF BOARD: It is evident that the claim of Mr. Mackey, that he be compensated for lost time because of his dismissal from the service of the Carrier, was not mentioned until the letter of March 28, 1958, from the Employees' General Chairman to the Director of Personnel of the Carrier. The notice of dismissal to Mr. Mackey was on the 17th of October, 1957. More than 60 days having elapsed before a claim was made for reimbursement for time lost, it came too late. Article V (b) Agreement of August 21, 1954, to which representatives of both parties were signatories.

We are constrained to hold that the purport and intent of the letter from the District Chairman of the Employees to the Superintendent of the Carrier, of date December 5, 1957, which is the first communication designated as an appeal, was to reduce the order of dismissal to that of suspension for Mr. Mackey, and that he be reinstated as a matter of leniency. There is nothing in the former letters and conference of November 12, 1957, between Mr. Matthews, Assistant Superintendent, and Mr. Macon, District Chairman, to indicate any other purpose than to secure leniency for Mr. Mackey. Our conclusion is strengthened by the brief and contention urged before this Board, based principally upon the theory that although the order of dismissal was not authorized as to claimant and Mr. Tharp, also engaged in the altercation, the subject of the charge, inasmuch as his order of dismissal had been remitted to a suspension of about four months, the same consideration should be accorded claimant.

The appeal and the claim here resolving itself into a request that the harshness of the dismissal order be reduced and Mr. Mackey restored to his former position was a claim for leniency. In this situation we have not the authority to entertain the claim as asserted, that being within the sound discretion of the Carrier. Awards 6085, 8675, 5300, Third Division.

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

That the parties waived hearing on this dispute; and

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 the Agreement was not violated.

AWARD

The claim will be dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: F. P. Morse
Acting Secretary

Dated at Chicago, Illinois, this 29th day of September, 1959.