

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

THE UNION TERMINAL COMPANY (Dallas, Texas)

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 (The Union Terminal Company, Dallas, Texas) violated, and continues to violate, its several agreements with the Organization when on May 4, 1957, it dismissed and separated from its service Howard Terry, Baggage Porter, on the charge that *he had violated Rule 709 of The Union Terminal Company's Operating Rules*, by accepting employment elsewhere without proper permission; and,

(2) That The Union Terminal Company violated the agreement rules when it undertook to control the employe's activities when away from its property and during such period of time as the employe was not in its pay; and,

(3) That the investigation held on May 3, 1957, and the ruling in connection therewith, were in violation of the agreement rules; and,

(4) That the ruling made by J. C. Lumpkin, Assistant to the Vice President and General Manager, The Union Terminal Company, was not authorized by the agreement rules; and,

(5) That because of the illegal and unlawful act of the Carrier in its attempt to control the activities of the employe when not in its pay and on its property, and since the Carrier failed to accord Howard Terry an investigation and legal ruling in connection therewith, as provided in the agreement rules, the said Howard Terry shall be reinstated to the service of The Union Terminal Company (Dallas, Texas) with his seniority rights unimpaired; that he shall be paid for all time lost (exclusive of any earnings which may have been paid

to him by the Tower Theater, Dallas, Texas while out of the service of The Union Terminal Company), as well as pay in lieu of vacation; and that his vacation, pass, and all other rights and privileges shall be restored to him as though he had never been separated from the service of the said The Union Terminal Company.

EMPLOYEES' STATEMENT OF FACTS: Howard Terry entered the service of The Union Terminal Company (Dallas, Texas), on April 1, 1935, in the capacity of Baggage Porter. On April 24, 1957, under file 810.1, the following letter was addressed to Porter Howard Terry over the signature of J. W. Thrower, Assistant to General Manager, The Union Terminal Company:

"We have information that you are employed by the Tower Theater, Dallas, Texas, as a cleaner, working six days per week, outside of your regular assignment as mail and baggage porter with this Company.

"Rule 709 of The Union Terminal Company Operating Rules, effective August 1, 1947, states specifically that employees must not engage in outside business without permission of the proper officer.

"You are charged with violation of Rule 709, as outlined above, and formal investigation in connection with this charge is set for 1:30 P. M., Friday, April 26, 1957, to be held in the Board Room, Third Floor, Union Station, Dallas, Texas. Please arrange for representative and any witnesses you desire.

"Acknowledge receipt in space provided below."

On May 3, 1957, an investigation was held "to determine facts and place responsibility in connection with charge that Porter Howard Terry had violated Rule 709, The Union Terminal Company Operating Rules, effective August 1, 1947" (see record of investigation, page 1). The investigation was conducted by O. B. Sayers, Assistant Director of Personnel, Texas & Pacific Railway Company.

On May 4, 1957, under file 810.1, the following letter was addressed to Mr. Howard Terry, 351 Bertram, Dallas, Texas, and signed by J. C. Lumpkin, Assistant to Vice President and General Manager:

"Reference is made to formal investigation conducted 1:30 P. M., May 3, 1957, to develop facts in connection with the charge that you had violated Rule 709 of The Union Terminal Company Operating Rules, effective August 1, 1947, by accepting employment elsewhere without proper permission.

"The investigation developed that you were guilty as charged.

"For this violation, you are discharged from the service of The Union Terminal Company effective this date."

J. C. Lumpkin did not conduct the investigation, nor was he present at the investigation, which was conducted by the Assistant Director of Personnel of the Texas & Pacific Railway Company. Likewise, O. B. Sayers has never been certified to this Organization as an officer or representative of The Union Terminal Company for any purposes of the agreement. The effect of Mr. Lumpkin's letter was to dismiss Howard Terry from service. Terry is at the time of this filing out of the service of the Carrier.

The Carrier requests the privilege of filing a rebuttal to employees' Submission.

(Exhibits not reproduced.)

OPINION OF BOARD: *The claimant in this case had been discharged in 1950 by the Carrier for violating Rule 709, the same rule that he is charged with violating in this claim, he was reinstated to duty on May 23, 1950 on the condition that he never again take employment elsewhere at a latter date and if he did take employment elsewhere at a latter date he would receive no consideration by the Carrier. This understanding was sent in the form of a letter dated May 22, 1950 by the Carrier to the Chairman of this Organization. The claimant was given a fair and impartial investigation therefore the discipline imposed on this claimant by the Carrier will not be disturbed.*

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;

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 record discloses no sound ground for holding the Carrier's disciplinary action was improper or should be disturbed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January, 1960.