

Award No. 9930
Docket No. CL-12042

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

RAILROAD DIVISION TRANSPORT WORKERS
Union of America, A.F.L.-C.I.O.

UNION DEPOT COMPANY

STATEMENT OF CLAIM:

(1) J. W. Granger, Mail Handler, was dismissed from service for an offense, which if he were guilty of could not be considered a major offense under the agreement between the Union Depot Company and the Railroad Division, Transport Workers Union AFL-CIO, whereby this employe knowingly would perhaps have injured another employe if instructions issued by the Baggage Agent were carried out.

(2) The Carrier violated the agreement when they failed to follow Rule 45, Item 4, Paragraph A of the agreement which states: "Employees will not be suspended nor dismissed from service without a fair and impartial trial."

(3) That J. W. Granger, Mail Handler, for the Columbus Union Depot Company, Columbus, Ohio, be reinstated to service; that all seniority rights and vacation rights be restored to this individual; that he be compensated at the pro-rata rate for each day that a junior employe was employed; and further that this dismissal be erased from his service record.

OPINION OF BOARD: The Carrier dismissed Claimant Granger on the stated ground of having refused to perform service as an extra mail handler on January 23, 1959, as instructed by the Baggage Agent. The Organization contends the Carrier's handling of this disciplinary proceeding, on the property contained various procedural defects which deprived the claimant of his rights under the Agreement. We find this contention to be without merit.

The evidence shows that claimant did indeed refuse to comply with an instruction given him by the Baggage Agent. The plea made in his behalf with respect to extenuating circumstances is not well-taken. It is apparent that the reasons advanced in mitigation of claimant's refusal were made as an afterthought. By reason of his improper conduct Claimant Granger became liable to discipline, since the Carrier obviously is entitled to require

employe compliance with instructions of its supervisors. The only question remaining to be considered is the extent of the discipline imposed.

Under the circumstances of this case we think that dismissal was an excessive penalty. The time already lost by Claimant Granger is sufficient discipline. We will hold that the claimant shall be reinstated with seniority unimpaired but without back pay.

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

That the parties waived oral hearing;

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe 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 properly determined that the claimant was subject to disciplinary action but the extent of discipline imposed was excessive.

AWARD

Claimant shall be reinstated with seniority unimpaired but without back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 28th day of April, 1961.