

Award No. 10409

Docket No. CL-9113

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
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

1. The Clerks' Rules Agreement was violated when Employee R. Stachowiak was held out of service pending an investigation.
2. Carrier shall now be required to return Employee R. E. Stachowiak to Yard Caller Position No. 70 at Muskego Yard, Milwaukee, Wisconsin and compensate him for all loss suffered from October 10, 1955 until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Employee R. Stachowiak was regularly assigned to Yard Caller Position No. 70 at Muskego Yard, Milwaukee, Wisconsin.

On October 5, 1955 Assistant Superintendent R. W. Graves notified Employee Stachowiak as follows:

"Charges are hereby preferred against you for allegedly being asleep while assigned as Yard Caller the night of October 3rd, during the early morning of October 4, 1955.

"Formal investigation will be held in the office of Superintendent, Room 201, Muskego Yard, Milwaukee, Wisconsin at 9:00 A. M. Saturday, October 8, 1955."

"Please arrange to be present. You may have representation as provided in the current schedule if you so desire."

On October 10, 1955 Employee Stachowiak was notified by Superintendent J. J. Dombrowski as follows:

"In regard to charges preferred against you for allegedly being asleep while on duty as a Caller the night of October 3rd and early morning of October 4, 1955.

In conclusion the Carrier should once again like to point out that schedule rules do not prohibit an employee being held from service pending an investigation, but to the contrary specifically provide therefor. Also, the only reason a decision was not rendered in connection with the investigation held in connection with the charges preferred against Claimant Stachowiak on October 5, 1955 is that he had already been dismissed from service as a result of a previous investigation. Further, in view of Claimant Stachowiak's refusal to accept reinstatement and return to work in compliance with the Superintendent Terminals' letter of November 22, 1955, any loss of earnings subsequent to November 22, 1955 on the part of Claimant Stachowiak is entirely his own responsibility.

For the reasons cited, there is no basis for the claim presented in behalf of Claimant Stachowiak and the Carrier respectfully requests the claim be denied.

All data contained herein has been presented to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The claimant was regularly assigned to Yard Caller position No. 70 at Muskego Yard, Milwaukee, Wisconsin. On October 5, 1955, Assistant Superintendent, R. W. Graves, notified employee Stachowiak as follows:

"Charges are hereby preferred against you for allegedly being asleep while assigned as Yard Caller the night of October 3, during the early morning of October 4, 1955.

"Formal investigation will be held in the office of Superintendent, Room 201, Muskego Yard, Milwaukee, Wisconsin at 9:00 A. M. Saturday, October 8, 1955.

"Please arrange to be present. You may have representation as provided in the current schedule, if you so desire."

On October 10, 1955, employee Stachowiak was notified by Superintendent, J. J. Dombrowski as follows:

"In regard to charges preferred against you for allegedly being asleep while on duty as a Caller the night of October 3rd and early morning of October 4, 1955.

"Your representative requested postponement from 9:00 A. M. October 8, 1955. I again set a date at 7:00 P. M. October 10, 1955 at which time a representative again requested postponement.

"I am now setting the time at 8:00 A. M. October 15, 1955 in the office of Superintendent, Muskego Yard. You are being held out of service effective immediately, pending the outcome of the investigation."

On October 15, 1955, investigation was held by Superintendent of Terminals in connection with charges preferred against claimant as set forth in Assistant Superintendent Graves letter of October 5, 1955. The employee states that the carrier violated its agreement when it held claimant out of service pending investigation and that the carrier shall now be required to return claimant to the Yard Caller position No. 70 at Muskego Yard, Milwaukee,

Wisconsin, and compensate him for all loss suffered from October 10, 1955 until the violation is corrected.

Under Rule 22 which is entitled "Discipline and Grievances" an employee who has been in the service more than 60 days, or whose application has been formally approved, shall not be disciplined or dismissed without investigation and prior thereto the employee will be notified in writing of the precise charge. Such charge will be filed with the employee within 15 days from the date the supervising officer would have knowledge of the alleged offense. At the investigation he may be represented by one or more duly accredited representatives. The employee may be held out of service pending such investigation, however, investigation will be held prior to the time employees are withheld from service when it is possible to do so. Section (b) states the investigation be held within seven (7) days (earlier if possible) of the date when charged with the offense, or held from service and the decision will be rendered within ten (10) days after completion of the investigation.

The only question presented in this docket is whether or not the carrier violated the agreement when it held the claimant out of service pending an investigation. The Claimant was charged on October 5, 1955 with events that happened on October 4, 1955 and a hearing was set down for October 8, 1955. Due to the fact that the claimant's representative requested postponement from October 8 to October 10th, and from October 10th to October 15th, the carrier properly held the claimant out of service as of October 10, 1955. The carrier was ready to hold an investigation within four (4) days of the happening of the event that the claimant had been charged with, in the letter of October 5, 1955.

Under Rule 22(a) the carrier may hold an employee out of service pending an investigation under the circumstances as set forth in this docket. The claim of the employee will be denied.

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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of March 1962.