

Award No. 11457

Docket No. CL-13482

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5166) that:

(a) Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 6-A-1 to 7-A-1, inclusive, when it held Mr. R. A. Martignetti, Clerk, Station Master's Office, Pennsylvania Station, New York, New York, New York Region, out of service, and subsequently imposed discipline of dismissal from service.

(b) Mr. R. A. Martignetti shall now be restored to service of Carrier with seniority and all rights unimpaired and his record cleared.

(c) Mr. R. A. Martignetti shall now be reimbursed for all wage loss sustained as a result of Carrier's action. (Docket 1051)

OPINION OF BOARD: After carefully studying the Record, we do not find that Carrier violated any of the Rules of the Agreement governing the procedural handling of this discipline case. The testimony is in conflict, but we believe Carrier presented sufficient evidence in support of its charges, viz., that Claimant left his work without permission; that he acted in a disrespectful manner towards his immediate Supervisor; and that he was insubordinate in a conference with the Superintendent of Passenger Stations.

Consequently, we find Carrier was justified in its decision that Claimant was at fault as charged.

There remains for consideration the matter of the discipline imposed: outright dismissal from the service.

If the guilt of an employe has been adequately proved at a fair trial, we usually sustain the punishment decided upon by Carrier; however, if especial circumstances exist which appear to require a departure from this general rule, we are empowered to and should alleviate the penalty assessed. Awards 4325, 5752, 8477, 9865, 10089, and 10953 — among others.

The Grievant herein had been in the service of this Company for thirty-two years; his service record shows very few blemishes; and (prior to this

case) he was never disciplined in connection with any matter involving disrespect or insubordination. It appears that he had been an efficient employe for a very long time.

At the trial, a Carrier officer who had worked in the same office with Claimant for eight consecutive years preceding the dismissal, testified:

"In the performance of his duties, in my opinion, Mr. Martignetti has been a good clerk."

On the morning of December 21, 1960, it appears that Mr. Martignetti became emotionally upset and behaved himself improperly — as charged. This being the case, disciplinary action was in order. But, in our opinion, the happenings on said date did not quite justify the final termination of a work career of thirty-two years duration.

In view of all of the circumstances alluded to above, we believe Carrier's imposition of the penalty of dismissal was arbitrary.

On the other hand, we do not condone disrespectful or insubordinate conduct on the part of any employe — new or old.

We believe and hold that the most desirable solution to the problems arising from this Claim is to restore Claimant to the service of the Carrier without pay for time lost (now covering a time period of more than two years) — but with his seniority rights unimpaired.

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 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 Claim should be sustained in part and denied in part — as shown and indicated.

AWARD

That Claimant be restored to the service of the Carrier with his seniority rights protected.

That he be reinstated to said service without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1963.