

Award No. 11650

Docket No. CL-11564

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

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

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Glenn S. Klinger, Freight House Foreman at Stroudsburg, Pennsylvania, be reimbursed for wage loss sustained July 2nd, 23rd, 24th, 25th, 28th, and 29th, 1958, on which dates he was arbitrarily withheld from service.

OPINION OF BOARD: The Claimant in this case was given a five day suspension for alleged discourtesy to a customer plus losing a day's pay because of the investigation.

The facts show that the customer wrote a letter to the Carrier, complaining about the conduct of the Claimant. A formal investigation was held and he was given a five day suspension. The customer was not called by the Carrier as a witness at the investigation.

The testimony of the Claimant and one of the other witnesses at the hearing was to the effect that the customer was unloading freight consigned to him without checking with the foreman. When the foreman went to carry out his duty and protect the property, the customer stated to him "that union men were headed by racketeers and that they had a Communist trend." At this the Claimant walked away from the customer. When some distance from him the Claimant made a remark to one of his co-workers which the customer overheard and took as derogatory.

In the judgment of this Referee the remark was not derogatory. While this Referee sitting previously with this Board recognized and continues to recognize that the Carrier has a right to demand courtesy of its employes to its customers (Award 10507) this is not a case of discourtesy.

In this case we have an unsworn letter from a customer who by the very language of the letter shows he is a very vindictive person. We also have a situation where the employe was subjected to slanderous statements by the customer and who literally turned the other cheek. As the Bible recognizes justifiable anger, there is no reason why this Division cannot. Furthermore, there is nothing to show that the employe exercised anger. This being so, we

are forced to the conclusion that the Carrier was arbitrary and capricious in suspending this employe.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1963.