

Award No. 11912
Docket No. CL-13873

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5310) that:

(a) The investigation held at Jacksonville, Florida, on Tuesday, October 3, 1961, did not substantiate the dismissal of H. J. Rutledge, Jr., from the service of the Carrier and that,

(b) Carrier violated the rules of the Laborers' Agreement in not setting a date for the requested investigation within the time limits stipulated in said Agreement.

(c) That H. J. Rutledge, Jr., be returned to Carrier's service with all rights unimpaired and paid for eight hours at the pro rata rate of his former position for Monday, August 21, 1961, and the same for each and every date subsequent thereto worked by an employee junior to Claimant in seniority at Miami, Florida.

OPINION OF BOARD: Claimant had been employed as a Station Porter at Miami, Florida, since December 12, 1946. He was furloughed from his assignment on May 1, 1961, and thereafter protected such extra work as became available.

On July 25, 1961, Claimant, together with some other employees, was arrested for gambling in a house maintained by the Carrier for the use of its Dining Car personnel. He was tried, found guilty, sentenced to ten days in jail and fined \$50.00. He was released after serving six days of the sentence.

During the period of Claimant's confinement in jail it appears that the Carrier made an attempt to call him for extra work at Miami. He was, of course, not available to protect the work.

On August 19, 1961, Claimant was notified of his dismissal from service for (a) gambling on the property, and (b) for failure to protect work account of being confined in jail.

An investigation was held on October 3, 1961, as a result of a request in writing by the General Chairman of the Organization on August 31, 1961. There is a conflict in the evidence of record as to the reason why the investigation was not held within 20 days from the date the request was made as required by Rule 32 of the Agreement. The Carrier alleges the delay was caused by a telephonic request from the General Chairman to postpone the hearing; the Organization asserts it was unable to arrange a conference with Carrier officials until September 11 and that at no time thereafter did the General Chairman request or agree to a postponement beyond the limits of the 20-day rule. Since neither party offered any evidence of probative value in support of its allegations, this Board cannot reconcile the conflict except to find that obviously a misunderstanding by the parties caused the delay. In any event, the issue is not crucial insofar as our decision is concerned because there is no evidence showing Claimant's substantive rights under the Agreement were in any way impaired or that his case was prejudiced by the delay. (Cf. Awards 6919 and 8711).

What is of concern to the Board in the light of all the evidence of record is the severity of the discipline assessed against this Claimant. In our considered judgment the offenses with which the Claimant was charged were not so serious and substantial as to justify the imposition of the most severe discipline within the power of any carrier or employer to assess—dismissal from service. Nor was Claimant's past record so bad as to warrant the extreme measure of discipline imposed. Where, as here, the Board finds the assessed discipline so severe as to amount to an abuse of discretion by Management, we are authorized to mitigate the punishment. (Awards 11457, 11344, 9865.)

Accordingly, the Board concludes that Claimant should be restored to service with all rights unimpaired but without pay for time lost.

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 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.

AWARD

Claim sustained to extent shown in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1963.