

Award No. 11914

Docket No. CL-14091

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**

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Grand Central Terminal)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5304) that:

1. Gateman Aldo Maestri was improperly and unjustly dismissed from the service of the Carrier.
2. Gateman Aldo Maestri be reinstated to service of the Carrier; his record cleared of the charge; and that he be paid for all time lost, retroactive to February 13th, 1962, seniority and other rights unimpaired.

OPINION OF BOARD: We have repeatedly and consistently held that where, as here, there is evidence of probative value that the claim was handled on the property ultimately as a request for leniency, it may not now be treated as a case sounding in contract for reinstatement and an award of money damages for breach. We have so held because essentially a plea for leniency is tantamount to an admission of guilt. (Awards 10789, 9973, 9775, 8991, 8478, 6085 are typical). Moreover, the Board has just as consistently applied the finding that reinstatement of an employe on a leniency basis (as contrasted with the Board's correction of an excessive penalty) is solely within the managerial discretion of the Carrier. (Awards 8715, 8474, 5498; see also Award 6085 supra.)

In view of the foregoing, the Board concludes that this claim may not now be considered on its merits because our review of the issue of reinstatement on a leniency basis at this juncture would be improper, that issue having been considered and decided by the Carrier during the handling of the claim on the property.

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.

AWARD

Claim dismissed.

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.

LABOR MEMBER'S DISSENT TO AWARD NO. 11914,
DOCKET CL-14091

We believe the Referee erred in his decision.

The Opinion of Board reads in part:

"We have so held because essentially a plea for leniency is tantamount to an admission of guilt."

In handling on the property, the Organization, in an effort to dispose of this dispute, made a proposal to Carrier to return the Claimant to Carrier service without pay. Because of this proposal the Referee held that the dispute could not be considered on its merits before the Board and stated:

"* * * the Board concludes that this claim may not now be considered on its merits because our review of the issue of reinstatement on a leniency basis at this juncture would be improper * * *."

The general purposes of the Railway Labor Act, the Federal Law that brought the Adjustment Board into being, provides for the prompt and orderly settlement of all disputes concerning rates of pay, rules or working conditions, and to provide for the prompt and orderly settlement of disputes growing out of grievances or out of interpretation or application of agreements covering rates of pay, rules or working conditions. The Referee in his decision is attempting to destroy the basic foundation of collective bargaining. The sole purpose of the Railway Labor Act is to bring the parties together in an orderly fashion so that through conferences and correspondence, solutions may be found for the amiable settlement of all disputes. Accordingly, this dispute should have been considered and decided on its merits rather than dismissed.

C. E. Kief