

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5357) that:

1. Carrier violated the terms of the current Clerks' Agreement and abused sound discretion when it arbitrarily and capriciously discharged Mr. J. N. Lambert, incumbent of position of Warehouse Foreman - Claim Clerk at Fort Worth, Texas, effective March 21, 1962, without proper investigation and without just cause.
2. Mr. J. N. Lambert shall now be restored to service with seniority and all other rights unimpaired.
3. Mr. J. N. Lambert shall now be paid for all time lost.

OPINION OF BOARD: Prior to the incident which gave rise to the instant claim Petitioner had filed claims with Carrier alleging that: (1) Carrier was permitting Johns-Manville Corporation to make certain inspections and prepare OS&D reports; (2) this inspection work and preparation of the reports was within the scope provision of Petitioner's Agreement with Carrier; and (3) Carrier's permitting the work to be done by Johns-Manville was a violation of the Agreement. This case does not involve the merits of those claims.

Claimant, at all times material herein, held the position of Warehouse Foreman - Claim Clerk at Carrier's Fort Worth, Texas, Freight Station. He was assigned to that position pursuant to a bulletin which described the duties of the position as:

"Unload and load freight from trucks and cars, check Warehouse, check freight to deliveryman, make and keep record of DR's and Over Reports, make claim inspections and OS&D reports; and also other duties as may be assigned by Agent." (Emphasis ours.)

On or about February 12, 1962, Claimant had knowledge of what he considered additional violations substantively identical to those in the pending claims referred to in the first paragraph of this Opinion. He sought to have Petitioner initiate a claim on his behalf. He sent the following note to Petitioner's Local Chairman:

"Date	Report No.
December 1	F 7524
December 14	F 8035
January 16	F 723
January 30	F 936
February 7	F 691

Fred:

Here are the pro nos. on Johns Manville Corp. that they made the reports on.

/s/ Jack N. Lambert"

The note came into the hands of Carrier.

Carrier served the following notice, dated March 15, 1962, upon Claimant:

"Please report to office of Superintendent, Fort Worth at 9:30 A. M., Saturday, March 17, 1962 for hearing in connection with your alleged violation of Transportation Rule 1310. It is alleged that you divulged without proper authority, information from OS&D reports. Your previous personal record will be reviewed in this hearing. You may have representative as specified in agreement rule if one is desired."

Transportation Rule 1310, cited in the notice, reads:

"Employees must not furnish any record, report or copy thereof or divulge the contents of same, to any person other than authorized representatives of the company without permission."

Hearing was held on the appointed date. The transcript is in the record.

During the course of the hearing Claimant admitted that he had sent the note to the Local Chairman. Carrier held this to be a violation of Transportation Rule 1310 and dismissed Claimant.

We find that the transcript of the hearing does not contain substantial evidence supporting Carrier's finding. The note did not "furnish any record, report or copy thereof or divulge the contents of same." The bare numbers identifying the reports cannot be construed as coming within the specific prohibited conduct prescribed in Rule 1310. We will sustain the claim with the qualification that Claimant shall be paid what he would have earned from the date of his dismissal to the date he is restored to service less what he actually earned in wages during that period.

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 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; and

That Carrier violated the Agreement.

AWARD

Claim sustained with monetary award as prescribed in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.