

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

THE CINCINNATI UNION TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5773) that:

(1) The Carrier violated the Clerks' Agreement when on April 20, 1964, it summarily dismissed Mr. Deen A. Mays, Clerk-Counterpane, Cincinnati, Ohio from service.

(2) Mr. Deen A. Mays shall now be reinstated to the service of the Carrier with seniority and all other rights unimpaired.

(3) Mr. Deen A. Mays shall be compensated for all wage losses sustained account this summary dismissal.

OPINION OF BOARD: The Carrier's policy on garnishment was set forth in the following Manager's Bulletin:

"To all concerned: Any employee who assigns his wages, or against whom a garnishee or levy is filed, will be dismissed from the service of the Company."

Mr. Deen A. Mays, with seniority from July 25, 1950, signed an acknowledgement of having read the foregoing policy in 1957 and of having received copies of the Bulletin concerned in 1963. During the fourteen years of his service with the Company he was party to five garnishments, the last of which occurred on April 7, 1964, and led to his termination.

The Organization acknowledges that the Carrier's rule prohibits garnishments, and that the garnishment did occur in this case. However, it argues that Mays had problems of illness at home which precluded repayment, that he had already made efforts to settle the account prior to the garnishment, and that other employees with identical offenses have not been penalized with termination. Accordingly, it concludes that he should be reinstated with compensation for earnings lost.

The Carrier points out that the rule of dismissal for garnishment is a common one in the industry, that Mays was treated leniently in four earlier

violations of this rule, and that there is no precedent for a person with five garnishments being kept in the Carrier's employ.

The rule in this case is clear, as in the fact that the Claimant was guilty of its violation. The only basis for the Organization's claim is that the penalty imposed was excessive, and inequitably applied. Certainly Mays may have been in personal financial difficulty due to illness, but he became involved in this debt with full knowledge of the consequences of garnishment, and had ample opportunity to straighten out the matter prior to the deadline date. Regarding discriminatory application of the dismissal penalty, evidence presented at the investigation makes it clear as the Organization contends, that the Carrier has been lenient in imposing the dismissal penalty in many cases. But it is equally clear that in those other instances not more than three or four garnishments were involved. Here we have a case involving five garnishments and there is no evidence than any employe has been kept in employment after a fifth garnishment.

There is no grounds for holding that the rule was improper or that the penalty imposed was either arbitrary or capricious in the light of the Claimant's past record of garnishments.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1966.