



Award No. 15981
Docket No. CL-16756

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

JACKSONVILLE TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6182) that:

(a) Carrier violated the Agreement when it dismissed Andrew Scott from its service effective December 14, 1965.

(b) Andrew Scott shall now be restored to Carrier's service with seniority and all other rights unimpaired and shall be compensated for all losses sustained as a result of his wrongful dismissal.

OPINION OF BOARD: On November 20, 1965, Claimant was charged with violating that portion of the President and General Manager's Bulletin No. 294 reading:

"Employees failing or refusing to pay their just debts, or against whom bills are frequently presented to the railroad for payment will, unless satisfactory reason is given, be dismissed from the service."

The letter of charge listed the complaints that had been received concerning Claimant's alleged failure to pay his debts, some of the complaints going back five and six years.

Formal investigation was held on December 7, 1965, after several postponements. A transcript of the investigation has been submitted and has been carefully considered by the Division. In the investigation the Claimant's representative protested because the writers of the letters of complaint were not present at the investigation. No rule of the Agreement describes the type of evidence that may be adduced at investigations, and the Board has many times held that written statements are admissible in investigations without the writer being present. (Awards 14276, 12816, 11342, 11237, 10596, among others.) There is no evidence in the investigation that the Claimant was denied the right to present any witnesses that he desired.

A review of the transcript of the investigation convinces the Board that some discipline was warranted. However, considering the entire record, and the fact that some of the complaints went back five and six years, we find that the discipline imposed was excessive. We will award that Claimant be restored to service with all rights unimpaired, but without any compensation for time lost while out of service.

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 the disciplinary action imposed was excessive.

AWARD

Claim sustained to the extent shown in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1967.