

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

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

THE WASHINGTON TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6718) that:

1. Carrier's action in removing Mr. Luchion Crum from service on April 30, 1969 was unjust, unreasonable, arbitrary, capricious, unduly harsh, and that the hearing was not fair and impartial.

2. Mr. Luchion Crum shall now be restored to service with seniority and all other rights unimpaired and paid for all time lost after being released as recuperated from personal injury sustained while on duty.

OPINION OF BOARD: This is a discipline case which we review as an appellate forum. The scope of our review is limited to: (1) was there a fair and impartial hearing on the property; (2) are the findings made on the property supported by substantial evidence; and (3) if the employee is found guilty, was the discipline imposed reasonable.

The Claimant was continuously employed by the Washington Terminal Company from September 10, 1948 until April 30, 1969 in its Mail and Baggage Department at Union Station, Washington, D.C. On March 20, 1969 the Claimant reported to the Carrier's Receiving Clerk that he had sustained an on-the-job injury. The Receiving Clerk sent the Claimant to the Carrier's Medical Examiner. On completion of the medical examination, the Doctor found "no definite external or objective evidence of injury at present" and dispensed relaxant medication and rubbing salve. The Claimant returned to the Receiving Clerk and notified him that he was marking himself off sick. At that time he did not properly complete personal injury forms. He was requested to complete personal injury forms but protested that he was in pain. He went home. The next day, Claimant had a back X-ray at a nearby hospital, which X-ray proved negative.

On March 25, 1969, Claimant reported back to work. He was requested to complete the unfinished personal injury forms. Again protesting pain, he failed to complete the injury forms and went home.

By his letter dated March 27, 1969, amended by his letter of March 28, 1969, the Superintendent of Mail and Baggage instructed the Claimant to report to the Office of the Superintendent of Mail and Baggage at 10:00 A. M., Thursday, April 3, 1969, at which time he would be charged with:

- (1) Refusal to furnish complete required information in connection with a personal injury.
- (2) Refusal to return to the Medical Director as instructed by Supervisor.
- (3) Leaving the property of the Company without permission.

The Claimant was found guilty of all three charges. Primarily because of the seriousness of Charge No. 2 he was dismissed. This happened on April 30, 1969.

Our careful review of the record indicates that the hearing, although punctuated by verbal vibrations, was conducted in a fair and impartial manner. None of the Claimant's procedural or substantive rights were abrogated. The Carrier is responsible for the safe, efficient and economical operation of the railroad, and it is the Carrier's prerogative and responsibility to promulgate reasonable rules to meet those ends to protect the health, welfare and safety of its employes and patrons. The Claimant, although intending to supply information later, can be faulted for not completing the personal injury forms.

The record indicates confusion about the condition of the Claimant and the instructions he received from the Medical Examiner. While this Board would never support insubordination or deliberate and willful refusal to carry out proper orders, we read the exchange between Claimant and Supervisor as a confused communication over what the Medical Examiner had said and advised. Again the Claimant can be faulted for not seeking proper clarification. However, there is some merit in the Employees' charge that the Supervisor could have called the Medical Examiner and cleared up the misunderstanding.

The Claimant has pleaded guilty to charges 1 and 2 with explanations and not guilty to charge 3. Claimant's explanations do not seem to have been made in an attempt to avoid disciplinary action, but due to circumstances occurring when he was injured. There was no serious breach of insubordinate conduct. There is no record of aggressiveness or ungentlemanly conduct to his superiors. No evidence was produced to find him guilty of charge 3, but to the contrary, three of the highest supervisors testified that none of them took exception to his leaving the property.

Awards of this Board, impressive in number, have held that the severity of punishment must be reasonably related to the gravity of the offense. We have repeatedly observed that misdemeanors do not require life sentences. Long experience has demonstrated that certainty of punishment is usually more of a deterrent to wrongdoing than the severity of the penalty.

Based on the entire record, and considering all the circumstances in the case, the Board considers permanent dismissal from the service to be exces-

sive, and concludes Claimant should be restored to service with seniority and other rights unimpaired, but without pay 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 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 discipline imposed was excessive.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1970.