

**NATIONAL RAILROAD ADJUSTMENT BOARD****THIRD DIVISION**

David Dolnick, Referee

**PARTIES TO DISPUTE:****BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP  
CLERKS, FREIGHT HANDLERS, EXPRESS AND  
STATION EMPLOYES****NORFOLK AND WESTERN RAILWAY COMPANY  
(Involving employees on lines formerly operated by the  
Wabash Railroad Company)**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6746) that:

(1) Carrier violated the provision of Rule 28 (a) (i) of the Schedule for Clerks when on June 23, 1969, it improperly and unjustifiably dismissed Clerk R. J. Himmelmann following an investigation held on Tuesday, June 17, 1969, to determine the facts and fix the responsibility, including claimants, if any.

(2) The Carrier will now be required to return Claimant to service with all rights and privileges unimpaired.

(3) The Carrier will now be required to compensate Claimant for all time lost as a result of being improperly and unjustifiably dismissed.

(4) In addition to the money amounts claimed herein, the Carrier shall pay claimant an additional amount of 6% per annum compounded annually on the anniversary date of claim.

**OPINION OF BOARD:** On June 9, 1969 Claimant was observed removing reflectors from Dodge trucks in transit on multi-level railroad cars located in the yard where Claimant was employed. He was released from duty about six and one-half hours after his starting time, but he was paid for the full day. He resumed work the following day and continued to work until he was dismissed from service on June 23, 1969.

Employees raise several issues. First, they contend that the Claimant was "removed from service" on June 9, 1969 and the investigation was not held until June 17, 1969, eight (8) days thereafter instead of seven (7) days as provided in Rule 28(a). But the Claimant was not removed from

service. He was sent home early on June 9, he returned the next day and worked continuously until he was dismissed from service. The investigation was held within the prescribed time limits in Rule 28(a).

Second, Employees contend that Claimant was not charged with any offense. The Superintendent's letter to Claimant dated June 11, 1969 set up the time and place for the investigation which was "to determine the facts and fix the responsibility, including yours, if any, in connection with your allegedly removing reflectors for Dodge pick-up trucks loaded on BTTX-200468, at approximately 7:25 P. M., June 9, 1969, on the East Track, Brooklyn Yard, Illinois." There can be no mistake that the grievant was fully apprised of the charge. It is clearly and effectively set out in the letter. And it certainly shows no preconceived notions of guilt. The notice need not contain a charge of specific rule violations.

As to the evidence in the investigation record, it clearly supports the charge. Claimant was unquestionably guilty of removing reflectors from Dodge trucks while enroute to their destination. A dismissal penalty is justified.

**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 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 17th day of July 1970.