

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

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

THE WASHINGTON TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6955) that:

1. The Carrier violated the Agreement between the parties when on December 22, 1969, it dismissed Assistant Foreman, Gilbert J. Fenwick from service after failure to afford a fair and impartial hearing and based on charges not substantially proven.

2. The Carrier's action in dismissing Mr. Fenwick was unjust, unreasonable, arbitrary and capricious, and an abuse of Carrier's discretion. The discipline assessed was too harsh and excessive.

3. Assistant Foreman Gilbert J. Fenwick shall now be reinstated to the service of the Carrier with seniority and other rights unimpaired.

4. Assistant Foreman Gilbert J. Fenwick shall now be compensated for all wage and other losses sustained account this summary dismissal.

5. Assistant Foreman Gilbert J. Fenwick's record shall be cleared of all alleged charges or allegations which may have been recorded thereon as the result of the alleged violation named herein.

OPINION OF BOARD: Assistant Foreman, Gilbert J. Fenwick, an employe with more than twenty years' service, was dismissed on a charge that he was in "Violation of the Washington Terminal Company General Rule E in that, in the Washington Terminal Mailhouse, Track 33, on November 1, 1969, on being found alone in a rail mail car with a rifled postal parcel immediately before you, you did bolt from the scene, and abandon said parcel, instead of protecting and reporting same, which it was your duty to do."

Rule E reads as follows:

"Employes must devote themselves exclusively to the Company's service while on duty, render every assistance in their power in

carrying out the Rules and Special Instructions, and report to the officer any violation thereof."

After a review of the record in this case we are persuaded that the Carrier failed to provide convincing proof that Claimant, Gilbert J. Fenwick, was guilty of the misconduct with which he is charged.

As the Board stated in Second Division Award No. 4468:

"Mere suspicious circumstances are insufficient to take the place of such proof. . . .

* * * * *

The most that can be said in favor of the Carrier's position is that there exists a suspicion that the Claimant may have committed the offense for which he was disciplined. But mere suspicion is insufficient to prove the Claimant's guilt convincingly."

We hold that the Carrier has not met the burden of proving its charge and that its disciplinary decision in this case was unreasonable, amounting to an abuse of discretion.

The Board, therefore, directs that Claimant be reinstated to the service of the Carrier with seniority and other rights unimpaired, that he be compensated for all wage and other losses sustained on account of his summary dismissal, and that his record be cleared of all alleged charges or allegations which may have been recorded thereon as a result of the alleged violation named herein. There shall be an appropriate reduction in compensation paid for any actual earnings of the Claimant in outside employment.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

AWARD

Claim allowed and to be disposed of in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1971.

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