

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19895**
Docket Number CL-19990

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Detroit, Toledo & Ironton Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7223)
that:

1. The Carrier violated the Agreement of May 1, 1966, as revised and amended when on August 24, 1971 they arbitrarily dismissed Charles F. Davis, Clerk, Springfield, Ohio **from** service.

2. Clerk Charles F. Davis, shall now be returned to the service of the Carrier with all seniority and other rights **unimpaired**, and

3. Shall now be compensated for all time he has been withheld from the service of the Carrier, and

4. **His** record shall be cleared of all alleged charges or allegations **which** may have been recorded thereon as a result of the alleged violations named herein.

OPINION OF BOARD: Claimant, a Yard and Inventory Clerk, commenced employment with the Carrier on February 19, 1951. Both the Carrier and Petitioner agree on the essential facts relating to the incident in question affecting Claimant: on March 18, 1971, during the late morning during **regular** working hours, Claimant acting strangely, was told to go home by his supervisor; leaving the building, Claimant returned several minutes later, threatened to kill his Supervisor and chased him with a loaded revolver which was forcibly taken from Claimant by another employee.

The investigation was held on August 18, 1971 and on August 24, 1971 Claimant **was** notified that he was dismissed from service because of his responsibility in the incident. It should be noted that Claimant had been hospitalized for three weeks beginning on March 18th.

Petitioner first argues that Claimant was prejudged, that the charge was not precise and that the hearing officer acted as prosecutor, judge, jury and witness. The **charge** stated:

"You are to appear at the **Scots** Inn, 11 West Leffel Lane at I-70, 10:00 A.M., Tuesday, March 23, 1971, where an investigation will be held to develop facts and determine your particular responsibility for your threat to shoot and/or kill, and your attempt to shoot and/or kill a DT

"& I Railroad employee while both you and he were on duty and on company property. Also for your possession of a loaded pistol while on company property, which was the weapon used to threaten DT & I Railroad employee's life. You are also charged with the violation of the following rules and regulations as set forth by the DT & I Railroad to govern the conduct of employees:

Safety First Rule - Page 5

General Notice - Page 6 - Paragraphs 1, 2, 3, 4, 6

Rule - N

Rule - Q

Rule - P

Rule - 724, First Paragraph

The above violations took place at approximately 11:45 A.M., March 18, 1971, in the DT 4 I Yard Office at Springfield, Ohio.

You are entitled to procedures and representation in accordance with agreements between your organization and the carrier."

Rule 16 (a) states that an employee "charged with an offense, shall be furnished with a letter stating the precise charge at the time charge is made." We find no basis for the Organization's contention with respect to the charge. Similarly, a careful study of the record does not reveal support for the Petitioner's arguments on procedure. We find that Claimant was afforded due process in the course of the investigation and his cause was not prejudiced.

The major thrust of Petitioner's argument deals with the discipline imposed. It is urged that Claimant was mentally and emotionally disturbed on March 18th and should not be held responsible for his actions. The Organization concludes that Claimant should not have been discharged, but should have been treated as a sick employee, particularly in view of his 20 years of service. In support of this position Petitioner relies in part on two letters from the physicians involved. One from his personal physician indicated that Claimant had a "nervous breakdown" in March of 1971 and had been since that time under the care of a psychiatrist and medicated under his direction. In a letter dated November 23, 1971, the psychiatrist stated that Claimant had been admitted to the hospital on March 18, 1971 "...in a confused state and seemed to be under the influence of drugs and/or alcohol.....the confusion and bizarre behavior persisted for only a short time." The letter continued:

"A review of the past history and contact with his medical doctor confirms that he has had a long-standing nervous disorder with some degree of drug dependency.....

"I believe the incident associated with the threatening behavior at work was a direct result of a heightened emotional state over the preceding few weeks. I" an attempt to control the anxiety, he was using increased amounts of tranquilizer and was no doubt in a state influenced by the emotional tension, the sedative effect of the drug, and possibly some alcohol. All of these influences lessened his self-control and permitted expression of an accumulated resentment toward his work associates.

He has continued in treatment since March 1971 and has shown improvement. The emotional stability is considerably improved. I do not regard him as a threat or as a dangerous person at this time."

It must be observed that both of the letters from the physicians were obtained by Petitioner several months after the discharge. Prior to the investigation however, on July 21, 1971, apparently based on an agreement, Claimant pleaded guilty to a charge of Assault and Battery relating to the incident, and the County Court sentenced him to six months in jail, a fine and costs. The sentence was suspended and Claimant was given one year's probation with the added requirement of a monthly medical report to the probation officer from a physician.

The Organization cites 2nd Division Award 5854 in support of its arguments. In that case the act complained of was insubordination rather than assault with a loaded gun; in that case also, management had all the facts at its disposal at the time it imposed the discipline. In the case before us there was no medical information at hand at the time of the investigation; there was a record of a judicial finding of responsibility for the acts complained of; there was proper concern by the Carrier for the safety of its employees. In our judgement, at the time the discipline was imposed it was warranted and not an abuse of discretion.

While based on the reasoning above we will not disturb the conclusion reached by Carrier, we are troubled by the management and human elements of the case. The total record before us certainly contains the strong presumption of mental illness on the part of Claimant, as well as apparent recovery. Throughout industry there has been an increasing awareness of the significance of mental illness and its impact on employment. In this case we have an employee with some twenty years of service and an apparently reasonably good record. A sophisticated and enlightened management ought not lose the skills acquired through this long tenure, as long as there is recovered mental health. We strongly urge medical reconsideration by Carrier, in its sole discretion, with a view to possible reinstatement.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **8th** day of August 1973.