

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20045
Docket Number CL-20159

Frederick R. Black-well, Referee

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

PARTIES TO DISPUTE: (

(The Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7297)
that:

1. The Carrier violated the rules of the Agreement extant between the parties when it improperly removed Clerk R. G. Williams from his Position No. 666, Car and Train Desk Clerk, midnight to 8:00 AM, at Oakland, California.

2. R. G. Williams be restored to his Position No. 666, Car and Train Desk Clerk, and compensated for all lost wages.

OPINION OF BOARD: Pursuant to Clerks' Circular No. 147-71, **the** Claimant was assigned to position **#666**, Car and Train Desk Clerk, on July 16, 1971; thereafter, he worked such position until November 24, 1971, at which time he was relieved of the duties of the position by the following letter of the Terminal Agent:

"Effective this date you are relieved of your duties of position number 666, Car - Train Desk Clerk, Oakland Yard, working hours **12:00** Midnight to 8:00 a.m.

It is my opinion that you have failed to qualify yourself to the degree that you can effectively discharge **the** duties of the above position, and you are hereby advised of your rights as to further employment under appropriate rules, clerks' agreement."

The Employees' position is that: (1) Claimant was entitled to a hearing under Rule 45 (discipline) and (2) the Claimant, after working the position for four and one-half (~~4~~^{4½}) months, was removed from the position in a manner which constituted arbitrariness in that the Agent's November 24 letter merely stated an opinion that Claimant was not qualified without giving any detailed reasons. Carrier's position is that it disqualified Claimant for justifiable reasons and that its action did not constitute discipline within the purview of Rule 45. (The Employees argued on the property that the Claimant could not be disqualified under Rule 30, which relates to failure to qualify within thirty (30) days, because he had been on the position more than thirty (30) days when his removal occurred, While this argument seems to have been abandoned in the Submissions to this Board, we note that this Board's prior Award 5052 has ruled adversely to the Employees on this facet of Rule 30.)

With respect to the Petitioner's contention in 1 above, we note the Carrier's statement that, while Claimant could have requested a hearing under Rule 46 (Unjust Treatment), the instant facts did not require a disciplinary hearing under Rule 45. We believe this statement is correct and that prior rulings clearly differentiate facts such as those herein from facts constituting discipline. Award Nos. 5105, 11975 and 14596. Consequently we must reject the **Employees'** first contention.

The Employees second contention, that Carrier was arbitrary, challenges the Agents' letter of November 24, 1971 as inadequately **stating** reasons for Carrier's action. However, Carrier did not rely only on the November 24 letter, so we need not pass on the adequacy of this letter standing alone. The record contains a December 8, 1971 letter from the Agent which gives Carrier's specific reasons for disqualifying Claimant. In pertinent part, this letter states:

"I have written two letters, July 26th and July 30, 1971, plus three notes, and have talked with Ray on several occasions bringing to his attention the discrepancies occurring on his job while he was on duty.

Mr. Williams has been on this job five and one half months and in my judgment the work should be routine particularly in the areas where he makes errors and oversights.

Mr. Williams has found it very difficult to write up outbound train lists, even after repeated warnings and letters as mentioned above. Along **with** this, Ray has failed to match movement waybills with cars moving out of Oakland instead making a card bill, when **all** the time in the box **in** front of him the waybills were available.

On November 23, 1971, **Mr.** Williams listed out of Oakland on GGM-23 **five** (5) **RM's** as empties to **MP 92 - Agent**. The boxes in front of him, mentioned above, held the revenue movement waybills for these cars of frozen pineapple worth well over **\$82,000.00**. Fortunately a wire proceeded the movement and Stockton was watching for them. I shudder when I think what could have happened."

The two letters and the three notes referred to in the foregoing December 8 letter are consistent with the contention that work errors had been brought to Claimant's attention.

The December 8 letter by Carrier's Agent, and the facts therein referred to concerning Claimant's performance of the duties of position #666, provided a statement which, taken at face value, showed a reasonable basis for Carrier's decision to disqualify Claimant from position #666. However, the Employees in their Rebuttal Brief merely suggest that the December 8 letter shows that the Agent was not disposed to help Claimant learn the duties of the position. The Employees offered no evidence to show that Claimant did not **commit** the recited errors, that such errors were commonplace and excusable, or that any exonerating or mitigating facts existed. Thus, in the record before us, the Employees have offered argument - but no evidence - to refute Carrier's evidence of justifiable reasons for the disqualification. Carrier's evidence, in consequence, must be taken as establishing a reasonable basis for Claimant's disqualification and we shall accordingly deny the claim.

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. Pauler
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1973.