

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Willard E. Hotchkiss, Referee

PARTIES TO DISPUTE:

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

WHEELING AND LAKE ERIE RAILWAY COMPANY

DISPUTE.—

"Request that William C. Cook be restored to service, reinstated on his former position of Crew Dispatcher, Brewster, Ohio, with seniority date and rights unimpaired, and compensated for wage loss sustained since September 13th, 1935, account of unjust dismissal."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Willard E. Hotchkiss was called in as Referee to sit with the Division as a member thereof.

On September 14, 1935, Mr. William C. Cook was dismissed from the service, the following being the specific charges filed against him:

1. Failure to call E. S. Schnierle, extra engineer, September 13, 1935.
2. Failure to show name of Fireman Schaney on memorandum of transfer to Third Trick Crew Dispatcher, September 13, 1935.
3. Failure to show name of Conductor Wise on memorandum of transfer to Third Trick Crew Dispatcher, September 13, 1935.
4. Engaging in disrespectful telephone conversation with Trainmaster's Clerk, September 13, 1935.

Mr. Cook requested and was granted a hearing before the proper officer of the carrier on September 24, 1935, at the conclusion of which the General Roundhouse Foreman declined the employes' request that Mr. Cook be placed back to work and reimbursed for the time lost. The highest officer of the carrier to whom appeals may be made also declined to restore Mr. Cook to the service and to his position.

The record shows that subsequent to Mr. Cook's dismissal the previous charges were supplemented by a further charge of changing the permanent records of the carrier.

The Referee has carefully studied the record of the case, including the printed agreement on hours of service and working conditions, transcript of the hearings before the appropriate officials of the carrier, the presentation of the case to the Board, and opposing arguments by representatives of the carrier. He finds that the several procedures prescribed are in order and that disagreements as to essential facts are immaterial.

The Referee understood the representative of the carrier on the Board to argue that the Board lacks jurisdiction in this case because discipline is a prerogative of management except as specifically modified by agreement.

The Referee agrees that discipline is a necessary attribute of management, but the manner of exercising discipline is frequently covered by labor agreements, as, indeed, in this one—as in Rule Twenty-two (22). Just as discipline is a necessary attribute of management, so is regard for due consideration and

proper procedure in the exercise of discipline so much of the essence of successful operation of agreements on hours and working conditions that such consideration and procedure may be held to be implicit in such agreements. The Referee holds that this case is properly before the Board and subject to decision on its merits.

Considering the merits of the case, the petitioner has cited the long record of the employee with the carrier, which record is as follows:

- Jan. 18, 1910: Employed as Brakeman, Cleveland Divn.
- Oct. 21, 1912: Transferred to Ironville Yards.
- Mar. 18, 1913: Record closed account incapacitated for duty by injury received 1-2-13 in Homestead Yard. Conduct and Services: Satisfactory.
- July 1, 1913: Re-employed as Clerk at Mogadore.
- May 15, 1916: Resigned to accept other position. Conduct and Services: Good.
- May 3, 1917: Re-employed as clerk at Mogadore.
- June 25, 1920: Resigned on short notice. Conduct and services: Fair.
- Aug. 27, 1920: Re-employed as Crew Dispatcher at Brewster.
- Sept. 14, 1935: Dismissed account disrespectful telephone conversation with Trainmaster's Office and failure to properly call crews. Services: Fair.

He was, prior to his dismissal, assigned to the Second Trick Crew Dispatcher position, hours 3:30 to 11:30 P. M.

Since it is acknowledged that discipline is an attribute of management, the burden of proof is usually on a disciplined employee to show an improper exercise of discipline. The long period of service of this employee with the carrier, and the fact that the record of difficulties began only after the employee became a representative of the Union, might serve to shift the burden of proof to the carrier if the record developed prima facie evidence that the discipline was because of the employee's union activity rather than for the causes stated; the Referee finds no such prima facie evidence. On the face of the record relations between the carrier and the union officials were correct, as were the procedures followed.

The employee was clearly guilty of the four specific offenses charged, and the records show that he had indulged himself in an attitude toward his superiors and associates which made him peculiarly liable to such offenses. In other words, "he was off on the wrong track."

Inasmuch as Mr. Cook has a long record of apparently capable service, during which he suffered a serious service disability, and since it appears that if re-employed he would confine himself to duties within the range of his abilities, the Referee is impelled to step outside the sphere of his legal responsibility and suggest that the carrier, without prejudice to the propriety of the discipline imposed, make an effort to re-employ Mr. Cook in some suitable position. In making this suggestion the Referee is acting merely as an individual and not as Referee.

AWARD

The Referee finds the four charges sustained, and the case is dismissed.
By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 22nd day of June 1936.