Award Number 325
Docket Number CL–251

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Robert G. Corwin, Referee

PARTIES TO DISPUTE:

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

THE CHICAGO AND EASTERN ILLINOIS RAILWAY COMPANY

DISPUTE—

"Claim of Hubert P. Cline, Stock Clerk, Store Department, Oaklawn Shops, Danville, Illinois, that he was improperly discharged from service; that rule #30 of the current agreement was violated; that he is entitled to compensation at his regular rate of $5.07 per day or the rate his seniority would entitle him to from and including November 21, 1934, to date he is reinstated and resumes work."

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

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.

This dispute being deadlocked, Robert G. Corwin was appointed as Referee to sit with the Division as a member thereof.

The claim of Hubert P. Cline, the facts in respect to it, and the arguments of the parties are identical with the claim of Charles J. Mayer, Jr., and the facts and arguments in Docket CL–252. For that reason the disputes can be considered together, and a repetition of the detailed findings avoided. Cline and Mayer were both employed as stock clerks in the store department of the Chicago and Eastern Illinois Railway Company in its Oaklawn Shops at Danville, Illinois, their seniority on the Clerks' roster dating back many years.

In June 1934 Mayer secured a leave of absence from the department and Cline did likewise in July of the same year. Their supervising officer was L. J. Ahlering, who was authorized to employ and dismiss them. Their purpose in leaving was to operate a tavern, and this was known by Ahlering as early as June 15th. Mayer returned to the service on October 2nd and Cline on October 26, 1934. They still owned the tavern on the last named dates, but there was some talk of their disposing of it and obtaining further leaves of absence. On the morning of November 21, 1934, they were notified by their General Foreman that they were not to commence work and requested to see Mr. Ahlering. When they did so, almost immediately thereafter they were asked by the latter to submit their resignations. Upon their refusal to do so they were informed by him that they were dismissed from service for the reason that they were interested in an outside business. This both, without effect, offered to abandon. Upon request, an investigation was granted and held on November 26, 1934, a copy of the record of the proceeding being included in the submission. At this hearing the charge against them was that they were engaged in an outside business, and Mr. Ahlering stated that its nature was of no determining consequence, except that work at night might impair the men's usefulness to the carrier. At the same time he conceded that their services had always been satisfactory and that he had never had occasion to reprimand either.

The foregoing charge, so limited, was the only misconduct alleged and that the men had an opportunity to meet. Upon request, Mr. Ahlering refused to

modify the discipline. An appeal was taken to the management and additional facts were then discussed. The action of Ahlering, however, was affirmed.

A great part of the record before us relates to matters not directly, at least, involved in the charge preferred at the original investigation. The discipline rule in the Clerks' Schedule governing the working conditions of complainants is number 30 and entitled "Investigation." In substance it provides that an employee of more than 60 days' service shall not be dismissed without just and sufficient cause, and that in the event of dismissal he may request an investigation, from which an appeal may be taken, with an assurance of a fair and impartial hearing. Various tribunals have construed similar rules to mean what they evidently contemplate—that the employee shall be afforded an opportunity to meet any accusation of dereliction in duty by offering testimony, with the aid of a committee of his choice. Such an investigation, guaranteed by the rule, must confront him fully with any and all charges and must permit him to answer or explain them in toto and disprove any delinquency, if he can. If relief is not granted, a record should be made of the evidence, and it is such a record only as should be considered on appeal and, if necessary, by the Adjustment Board. If the original record warrants a refusal of the discipline awarded, such action should be taken, for no attention should be paid to the extraneous circumstances.

The submission here, however, and the insistence of the carrier in requesting that we consider the additional evidence it has introduced, leads us to the inescapable conclusion that it was not upon the charges discussed at the first investigation but upon other issues that the carrier based its action and through which it seeks its justification. For this reason they may be pertinent.

Briefly stated, it appears that late in October a letter and an editorial were published in a local newspaper condemning complainants' tavern for permitting a lascivious orgy in the early hours of a morning. These led to a temporary revocation of the proprietors' license, a great deal of further publicity, and a number of actions and hearings. As the result of it all, the newspaper evidently concluded that the letter which inspired its editorial was prompted by the spite of a disgruntled employee, who had been dismissed, and it humbly retracted its accusations. After lengthy hearings all charges against the present complainants were dismissed. Notwithstanding this, the carrier continued to secure evidence in an effort to substantiate the disorderly conduct of the tavern.

So seeking to support its position, the carrier apparently concedes that these additional circumstances justified its discipline. The General Manager says that he instructed Ahlering to discharge complainants when he heard of a violation of Rule G of the Operating Department (referring to use of intoxicants), and that he relied upon the affidavits, and, according to the carrier's argument, upon the publicity, to establish misconduct. He adds that employees have never been permitted to operate taverns.

This all convinces us that the kind of an investigation which Rule 30 contemplates was never accorded the claimants. Had it been, we trust that the management would have been as charitable to old employees against whom no other fault had been found as the other tribunals were just in finding in their favor. The knowledge of the officer who had the power to hire and fire these employees must be imputed to the company. When this officer took the men back into service all the facts were before him. If there was any impropriety in their outside activity, they had the right to rely upon its condonation, and we have a case similar in principle to the decision of Judge Payne, to which we are cited, and Award No. 60 of the First Division of the Adjustment Board. Conceding that the management acted in good faith, we think surely there has been a violation of Rule 30.

A question of jurisdiction was previously raised and settled by the Division. Certain cases of the Kentucky courts are cited in support of the proposition that the Division need pay no attention to the discipline rule. To follow them, if that be their purport, would mean the reversal of numerous awards of this and other Divisions, the Railroad Labor Board, and all the Regional Boards of Adjustment. We prefer to leave such a momentous decision to other than the Kentucky courts, particularly as we believe that it is a perfectly proper provision of any contract of employment, supported by sufficient consideration,

that the employee will not be discharged without just cause; and that a finding to the contrary would affect a stability in employment, which the railways of our country have created and enjoyed in excess of any other industry.

AWARD

Claim sustained; other earned income to be deducted.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 20th day of October, 1936.