

Award No. 2162
Docket No. CL-2207

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

CHICAGO & NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that—

(a) Miss Tina Ortgiesen (clerk in Motive Power Department) be restored to service with seniority date and rights unimpaired.

(b) That she be compensated for all wage loss sustained account carrier's unjustified action in dismissing her from service.

OPINION OF BOARD: Rule 3 provides that "* * * The investigation will be held within ten (10) days of the date when charged with the offense * * *". The rule also provides that "* * * Prior to investigation the employe will be notified of the precise charge against him * * *." Rule 4 provides for a fair and impartial hearing.

The hearing was held on May 19, 1942. Under date of May 18th claimant received the following notice:

"Please arrange to be in Mr. J. C. Stump's office at Chicago Shops, tomorrow, May 19th at 9:00 A.M. Having a representative with you, if you so desire."

The investigation consisted entirely of an examination of claimant herself. Questions asked were largely of an impeaching character. That is, she was asked if she had not made certain remarks to or in the presence of some half dozen specified persons. Statements of such persons were referred to but they were not called as witnesses at the investigation. In other words she was not confronted by her accusers. She denied having made all the remarks attributed to her. And so the matter stood at the close of the investigation on May 19th.

On May 21st "supplemental statements" were taken from the persons who may be said to be claimant's accusers. Under date of May 26th claimant was notified of her dismissal from service.

She complains that she was not notified of the precise charge against her prior to the investigation; that she did not get a fair and impartial hearing; that the evidence was insufficient to justify her dismissal. We shall not discuss the sufficiency or weight of the evidence for the reason that it is hardly debatable that claimant was not prior to the investigation, apprized of the precise charge against her; nor did she receive a fair and im-

partial hearing as that term is generally understood, and as construed in many Awards of the Adjustment Board: "A fundamental incident of a fair and impartial hearing is that accused shall be advised **definitely** as to what he is charged with." Award 562. It is essential to a fair and impartial hearing that the accused shall be present at the examination of accusing witnesses and be afforded the right of cross-examination. First Division Awards Nos. 3088, 3509, 4306, 4596. The use of the "supplemental statements," taken on May 21st, as a partial basis of dismissal was contrary to the rule laid down by this Division in Award No. 775.

It is suggested that claimant waived her rights as established by the cited Awards. We think the suggestion is without substance. Essentially, the so-called investigation was nothing more or less than a cross-examination of claimant.

As we said in Award No. 1294: "For this Board to sustain the procedure upon which this dismissal was based would be to abrogate entirely the requirement for a fair and impartial hearing * * *."

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier violated the express terms of the agreement in that it failed to notify claimant of the precise charge against her prior to the investigation; and in that it failed to accord her a fair and impartial hearing.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of April, 1943.