

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Mr. C. F. Olson, Ticket Clerk, Central Station, Chicago, be restored to service with full seniority rights intact and that he be compensated for all time lost subsequent to his dismissal on February 28, 1940, less amounts earned in other employment.

OPINION OF BOARD: Certain facts have been jointly certified to the Board by the interested parties, and, therefore, are not in dispute. As so certified, these facts are:

"On February 26, 1940, Ticket Clerk Olson was notified by Assistant Trainmaster, Mr. E. C. Harper, to attend an investigation on the following day for irregularity in the selling of ticket form 223-5M, number 918, dated January 22, 1940. Investigation was conducted on February 27, 1940, to develop if possible how unreported coach ticket, Chicago to Birmingham, had Olson's die on it. It was admitted by Mr. Olson that occasionally when absenting himself from his ticket window for a few brief moments, he did not put his cash and die in the vault. Mr. Olson was notified of his dismissal from service on February 28, 1940. This has been handled in the usual manner up to and including the Manager of Personnel, the highest officer of the carrier handling appeals of this nature."

Other facts and contentions, bearing upon the dispute, have been developed. Petitioner admits that "occasionally when absenting himself from his ticket window for a few brief moments, he did not put his cash and die in the vault," but attempts to excuse his conduct in this regard, by saying that his instructions given in September, 1939, were in this form: "We were verbally requested to put our boxes and dies in safe when going to lunch"; and he says, further, that the practice was thereafter followed of "leaving the cash box and die in position for use when leaving the window assigned for a few minutes" while going to the toilet, or to the information bureau or tariff case on business connected with the work, was never stopped, nor any instructions issued to discontinue the practice; and we are left to infer that the situation under consideration arose from this practice. On the other hand, the contention of the carrier is that the instructions were that an employee "must personally safeguard his stamps, dies and cash or money when absenting himself under any circumstances from his position at ticket window" and, further, that petitioner had been guilty of similar conduct on April 6, 1939, and was then warned that a repetition thereof would be a justifiable cause for formal handling and dismissal. It appears that in each of the instances mentioned petitioner paid to the carrier the price of the ticket involved.

On February 26, 1940, petitioner was notified that an investigation of his conduct would be held on the day following. He was given precise notice of the charge against him, and told that he might have a representative of his own choice present. He appeared in response to this notice, accompanied by his representative. A regular hearing was held, the minutes of which are in the file, and from which it appears that petitioner was given an opportunity to explain his alleged delinquency, and that his representative participated in the hearing by asking questions and otherwise. However, at the end of the hearing a discussion was had with petitioner's representative and Assistant Trainmaster, Harper, immediately following which a colloquy between the petitioner and Harper ensued:

"Mr. Olson:—I would like to get my say in here—

Mr. Harper—You are not asking any questions or telling anything here.

Mr. Olson:—I have a right to be heard.

Mr. Harper—You are answering what questions we ask."

Rule 24 of the agreement between the Brotherhood and the carrier provides:

"Employees who have been in the service more than sixty (60) days will not be disciplined without a fair hearing. They may be suspended pending a hearing which shall ordinarily be held within ten (10) days. At a reasonable time prior to hearing he shall be apprised of the precise charge and shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by a counsel of his choice. * * *"

The requirements of the rule quoted were strictly complied with, unless it be that the refusal to permit claimant to "get my say in here—" deprived him of the "fair hearing" for which the rule in question provides. Petitioner contends that such "fair hearing" was denied him.

Two questions arise. One, was the conduct of the petitioner such as to justify his dismissal from the service; and, two, was he given a fair hearing.

On the first question, which involves an alleged violation of instructions of a superior, it should be noted that the petitioner at one point contends that the verbal instructions given related to absences when going to lunch; but at another point he, in effect, admits a "minor infraction of instructions" and seeks to excuse the same because of a custom that existed in the office, in which, as he contends, the carrier acquiesced. We think he did violate his instructions, and subjected himself to dismissal therefor. We do not think that the claim that others, in the same office, indulged in the same practice, with the consent or acquiescence of the carrier, has been established.

It has been the uniform holding of this Board that, while all the facts and circumstances surrounding any disciplinary action should be carefully examined, the judgment of the carrier in such matters will not be disturbed, unless the record considered discloses that the action taken was arbitrary, capricious, or clearly wrong. For one of the last holdings on this point see Award 1848. Here, as we think, the claimant admits the violation of instructions. True, he claims that it was only a minor infraction thereof, but it was his second offense along the same line, and he had been admonished that a repetition of the first offense might lead to his dismissal. In the face of this he repeated the offense. Considering the effect on other employees, the carrier could not be expected to condone repeated violations of this character. We cannot reinstate the claimant without too far weakening the power to enforce its instructions, which properly reside in the carrier. Certainly we cannot do so, merely because we may believe that the action taken was, in the circumstances, too severe.

On the second question, while we do not approve the conduct of the Assistant Trainmaster in denying the petitioner an opportunity to further explain his conduct, we do not see that such explanation could have changed the admitted facts. Furthermore, petitioner was given full opportunity to explain his position, in the course of his examination. Neither the petitioner nor his representative took any exception, or made any objection at the time, to the action of the Assistant Trainmaster. All of this being true, we cannot say that he was deprived of a fair hearing. The fundamentals of such a hearing are precise notice of the charge, reasonable opportunity to produce witnesses and make reply thereto, and the aid of counsel or other representation. Clearly, all these were accorded the petitioner.

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 has not violated the current agreement, in respect to the fair hearing provided for therein, as claimed by the petitioner; nor in dismissing him from the service on account of his violation of its instructions.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of June, 1943.