

Award No. 4079

Docket No. CL-4053

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter—Referee

PARTIES TO DISPUTE:

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

**CHICAGO, SAINT PAUL, MINNEAPOLIS AND OMAHA
RAILWAY COMPANY**

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

- (a) That the Carrier violated agreement rules when under date of October 6, 1947, George Rigelhof, Relief Yard Clerk, Minneapolis Station, was dismissed from Carrier service, and
- (b) That Clerk George Rigelhof be restored to duty, without prejudice, and with full seniority and/or all other rights accruing to him by virtue of continuous service, as of October 1, 1947, and
- (c) That Clerk George Rigelhof shall be reimbursed for all wages and monetary losses sustained by his dismissal from Carrier service.

EMPLOYEES' STATEMENT OF FACTS: On October 1, 1947, George Rigelhof, holding assignment as Relief Yard Clerk at Minneapolis Station, was held from service pending filing of formal charges against him.

Under date of October 2, 1947 he was cited by Superintendent to appear for investigation on October 3 on formal charge of failure properly to perform the duties of his assignment September 30, 1947, specifically, his refusal to carry out instructions of the superior officer in charge, and deserting his assignment prior to completion of shift.

Investigation was held on October 3, 1947 and under date of October 6, 1947 he was furnished with Discipline Notice No. 67, signed by Superintendent, T. J. Cody, Minneapolis, advising that he was dismissed from the service of the Carrier. Copy of investigation attached hereto and made a part hereof, designated as Employes Exhibit "A".

Clerk Rigelhof's relief assignment on September 30, 1947, was from 3:00 P. M. to 12:00 Midnight—assigned meal period 6:00 to 7:00 P. M.

During this shift there were two Yardmasters on duty; one from 3:00 to 11:00 P. M. the other from 11:00 P. M. September 30, to 7:00 A. M., October 1, 1947.

During Clerk Rigelhof's assigned meal period Carrier operations required the services of a Yard Clerk on September 30, 1947.

To avoid payment of overtime second trick Yardmaster on duty requested Clerk Rigelhof to work his assigned meal period without overtime

Rigelhof was specifically charged, in letter addressed to him dated October 2, 1947, as follows:

"You are charged with failure properly to perform the duties of your assignment September 30, 1947, specifically, your refusal to carry out instructions of the superior officer in charge and deserting your assignment prior to completion of shift."

Copy of said letter is attached hereto and marked Carrier's Exhibit C-1.

On October 3, 1947 hearing was conducted at Minneapolis, Minnesota. A transcript thereof is attached hereto and marked Carrier's Exhibit C-2.

Under date of October 6, 1947 Clerk Rigelhof was dismissed from service. Copy of Discipline Notice No. 67, bearing date of October 6, 1947, is hereto attached and marked Carrier's Exhibit C-3.

POSITION OF CARRIER: The primary questions here involved are:

1. Was George Rigelhof guilty of the charges for which he was disciplined?
and if so:
2. Was discipline in the form of dismissal too severe for the offense committed?

In response to Question 1 the carrier only has to refer to Rigelhof's statement of October 3, 1947 (Carrier's Exhibit C-2), wherein the charges are definitely proven by Rigelhof's own admission.

In response to Question 2 the carrier submits that refusal to carry out instructions of a superior officer constitutes insubordination, which is a most serious offense. The carrier further submits that deserting one's assignment is likewise a most serious offense.

The facts in evidence support not only the charges preferred but also the measure of discipline administered, and this Board cannot consistently support claim of the employes that Rigelhof was innocent of charges preferred and that he must be returned to service with seniority rights unimpaired and compensated for time out of service since his dismissal. There is no violation of schedule rules in evidence.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant George Rigelhof was held out of service on October 1, 1947, and charged with failure to perform the duties of his assignment in refusing to carry out instructions of the superior officer in charge and with deserting his assignment prior to the completion of the shift. After investigation, he was dismissed from the service.

The record shows that on September 30, 1947, Claimant was assigned 3:00 P. M. to 12:00 Midnight, with meal period 6:00 P. M. to 7:00 P. M. During the tour of duty two Yardmasters were on duty, the first being assigned 3:00 P. M. to 11:00 P. M. and the second, 11:00 P. M. to 7:00 A. M.

The record shows that Yardmaster Savage, who came on duty at 11:00 P. M., directed the Claimant to check house track 6 and elevator tracks 7 and 8. Claimant had ample time to have performed the work during his assigned tour of duty. He refused to do it, saying that he had to deliver cross town bills to the Northern Pacific Railway. The record shows also that the Yardmaster assigned 3:00 P. M. to 11:00 P. M. directed Claimant to work his meal period and instead of claiming time and one-half under the rules, to leave early at the end of his tour of duty. As we have repeatedly said, employes are required to follow instructions of superiors and if a violation of the Agreement results, they must seek relief by appeal to this Board. An employe may not refuse to carry out instructions within his ability to perform without subjecting himself to discipline.

The record discloses that on October 30, 1947, Carrier procured a statement from the Yardmaster on duty who first supervised the Claimant's work

on the day of the dispute. This was about 24 days subsequent to Claimant's dismissal. Such statement is not proper evidence and will not be considered here. If the evidence of this Yardmaster was to be used, it should have been produced at the investigation. The very purpose of an investigation is to give an employe an opportunity to meet the evidence produced against him.

We do not condone the seriousness of the offense committed by this Claimant but there were mitigating circumstances which the Carrier seems to have overlooked. The record does not dispute the fact that Claimant worked his meal period with the understanding that he would quit early rather than claim overtime. It does not appear that Claimant has been previously disciplined or that he has been other than a faithful employe. Under these circumstances, we think the discipline assessed was too severe. The Claimant will be restored to duty with seniority rights unimpaired without reimbursement for wage losses. Award 3227.

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 Employes involved in this dispute are respectively carrier and employes 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

The Agreement was violated in that the discipline assessed was excessive.

AWARD

Claims (a) and (b) sustained. Claim (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.