

Award No. 4652

Docket No. CL-4646

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John M. Carmody, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
RR. CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.;
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN
ANTONIO, UVALDE & GULF RR. CO.; THE ORANGE AND
NORTHWESTERN RR. CO.; IBERIA, ST. MARY & EASTERN RR.
CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.; NEW
ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA AND
NORTHERN RR. CO.; SAN ANTONIO SOUTHERN RY. CO.;
HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH
SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE
CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO.**

(Guy A. Thompson, Trustee)

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

- (a) The Carrier violated the Clerks' Agreement in September, 1948 when it dismissed Mr. R. E. Cheatham on charges that were not sustained. Also
- (b) Claim that Mr. Cheatham be reinstated to his former position with seniority rights unimpaired and that he be paid at the schedule rate of his position for each day he is withheld from service.

OPINION OF BOARD: This is a discipline case. The Organization maintains the Carrier has not proved its charge "reading confidential matter in my private office (Superintendent Sheffield) and furnishing this information to other employees, August 31, 1948." Claimant Cheatham was Chief Clerk to Superintendent Sheffield.

For reasons that he did not disclose in detail in the record, Superintendent Sheffield instructed Traveling Car Service Agent Vineyard on August 30, 1948, to make a check on switch engine in North Yard, Fifth Ward Engine.

Vineyard made this check and instead of sending his report to the Superintendent's office through the customary mail service or handing it to the Chief Clerk, the General Clerk, or the Superintendent's secretary, he placed it on one of the desks in the Superintendent's private office early the next morning.

The record does not disclose whether the Superintendent had yet seen the report or how long after its delivery Chief Clerk Cheatham handed the following memorandum to General Clerk Reese: "There is a full page written report on his desk covering every move by 5th Ward Engine, and signed by Doc Vineyard—must be doing a little pigeoning for him." The "his" and "him" were identified by Claimant Cheatham at the subsequent investigation as Superintendent Sheffield.

The Organization contends that inasmuch as the report was not marked "Confidential", Claimant violated no confidence. It claims that Yard Clerks, in line of duty, and others had similar information, and, further, that a copy was made a part of the record of the investigation. Who is more likely to know what is confidential material in the private office of an official than that official himself? In this case the Superintendent, for reasons best known to himself but presumably related to his official responsibilities, asked the Traveling Car Service Agent, on August 30, 1948, to make a special check of switch engine movements for him. The results were incorporated into a one page report that this Agent personally delivered to the Superintendent's private office the next morning.

We entertain no doubt that so far as the Superintendent was concerned, this was a confidential report whether it was so marked or not. There can be little doubt that Claimant Cheatham recognized its confidential nature when he wrote his memorandum to General Clerk Reese "signed by Doc Vineyard—must be doing a little pigeoning for him." The fact that the Superintendent permitted it to be made a part of the record several days later is immaterial. A report may be confidential one day and public property the next without destroying the confidential value of the report as of that one day.

Was the charge proved? We think it was. An examination of the record reveals that Claimant admits he wrote the memorandum to General Clerk Reese and that that action was not in line of his duty. That Reese did not examine the report then or later is immaterial.

We are asked to order the Carrier to restore Claimant to his former position with seniority rights unimpaired, with compensation for each day held out of service. It is admitted in behalf of Claimant that he was indiscreet but it is pleaded that his conduct did not warrant the severe discipline imposed upon him. The record discloses that at one time during negotiations on the property, the Carrier offered restoration to service but without compensation for time lost and on a less favorable assignment arrangement. This offer was rejected. Our conclusion here is not intended to be a barrier to a renewal of negotiations looking to suitable reemployment.

None of the exceptions to the general rule, held in a long line of Awards by this Division, with respect to reversing the decision of Carriers in discipline cases, applies here. Claimant held a responsible position; the Superintendent had every right to expect loyalty in the performance of his duties. The memorandum he wrote that led to his dismissal speaks for itself on that score. It is not claimed the investigation was not fair.

We conclude that the record does not warrant our ordering restoration to service on the terms prayed for.

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 Employees involved in this dispute are respectively carrier and employees 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 Agreement was not violated.

AWARD

Claims (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of December, 1949.