Award No. 4826
Docket No. CL-4779

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

THE PENNSYLVANIA RAILROAD COMPANY

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

George D. Wolf, Clerk, Pennsylvania Produce Terminal, Philadelphia Terminal Division, Philadelphia, Pennsylvania be returned to service with all rights unimpaired and compensated for all monetary loss sustained dating from August 19, 1948, until adjusted. (Docket E-642.)

OPINION OF BOARD: Claimant is a regularly assigned Clerk at the Pennsylvania Produce Terminal, Philadelphia, Pennsylvania, his tour of duty being from 11 P. M. to 7 A. M., with Saturday his day of rest. On August 19, 1948 he was held out of service for alleged violations of rules and after an investigation he was, on September 15, 1948, dismissed from the service. Claimant contends that the Carrier violated Rules 6-A-1(a) and (b) and 6-C-1 (a) of the current Agreement in imposing the discipline, and that the evidence does not sustain the Carrier's finding of guilt. The cited rules provide:

> "6-A-1. (a) Employes will not be suspended nor dismissed from service without a fair and impartial trial.
>
> (b) When a major offense has been committed an employe suspected by the Management to be guilty thereof may, after the occurrence of the offense, be held out of service pending trial and decision."
>
> "6-C-1. (a) An employe who is accused of an offense and who is directed to report for a trial therefor, will be given reasonable advance notice in writing of the exact charge for which he is to be tried and the time and place of the trial."

Claimant contends the notice given was insufficient to take him out of service. The record shows that Claimant was notified by telegraph on August 19, 1948 not to report for duty until further notice. On August 20, 1948 Carrier mailed a letter to Claimant as follows: "This will serve as notice that you are suspected of committing a major offense and are being held out of service pending trial and decision." Rule 6-A-1(b) requires no particular form of notice to hold an employe out of service. The notice given clearly advised Claimant that he was held out of service and the reason therefore. Nothing else is required. There is no merit in this contention.

On August 24, 1948 Claimant was advised in writing as to the time and place of trial, and the charges upon which he would be tried. The charges were in the following language: "Violated instructions with respect to the dissemination of information concerning produce shipments by making such information available to unauthorized person or persons." This notice is sufficient. The charge need not be in the form of a criminal complaint nor is the Carrier obliged to include the details or evidence it may adduce at the trial. If the charge reasonably advises the employe of the act or acts he is charged with committing, a compliance with Rule 6-C-1(a) has been had. The contention that this statement of the charge was inadequate has no merit.

The evidence produced at the trial shows in substance as follows: Prior to May 15, 1948 it had been the practice of the Carrier to give out information concerning the number of cars of various commodities on hand and to advise any car-lot receiver who requested it the number of cars of produce arriving for the market on the day following. On May 15, 1948 all employes working under the Freight Agent were advised and directed to discontinue this practice and not to give out information of any kind except information which consignees were entitled to as to cars consigned to them. Claimant acknowledged receipt and understanding of this notice. In August 1948 it came to the attention of the Carrier that information concerning the arrival of car-lot produce shipments was being improperly divulged to persons not entitled to them and the matter was turned over to the Police Department for solution.

There is evidence by Captain Pearce and Lieutenant Shiller of the Police Department that they saw Claimant place a paper in a locker assigned to a produce broker. They removed the paper, made a copy thereof, and placed the copy back in the locker. When the produce broker came to the locker in the early morning hours, the officers appeared on the scene. The broker denied receiving any such information from locker, but the paper was gone. It is not disputed that the contents of the paper contained information within the prohibition of the notice of May 15, 1948. The police officers testify to certain admissions made by the produce broker which were denied on the trial. The evidence of Claimant as to his whereabouts during the early morning hours while the locker was under surveillance, and at the times he is alleged to have been at the locker, is not at all convincing. We think the evidence in support of the charges made, if believed, was adequate to sustain the finding of the Carrier. The finding of guilt is clearly sustained by the evidence and under such circumstances we are not in position to interfere with such finding.

It is urged that the discipline assessed was excessive. The evidence shows that Claimant has been employed by this Carrier for 31 years, 20 years of which have been in the position he occupied at the time of his dismissal. His conduct throughout his employment has been exemplary insofar as the record shows. The offense committed was the violation of a new rule involving a change of policy and does not appear to have resulted in financial loss to the Carrier. While we cannot condone the conduct of this employe and the methods employed by him in an attempt to avoid responsibility for his act, we do feel that a dismissal from the service was extremely harsh under all the circumstances shown. We realize the necessity on the part of a Carrier to maintain discipline if it is to operate its railroad in an efficient manner, and while we will not ordinarily interfere with the punishment meted out after sustaining a finding of guilt, yet we feel that dismissal from the service was excessive after a consideration of the mitigating circumstances of the case. We think that a return of Claimant to service with seniority rights unimpaired, without compensation for time lost, constitutes an adequate penalty to insure the future adherence of this Claimant to the rules of the Agreement and the directions of the Carrier.

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

That disciplinary action was warranted but dismissal from the service found to be excessive under the circumstances shown.

AWARD

Claimant shall be returned to service with seniority rights unimpaired within ten days from date hereof. Claim for monetary loss denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of March, 1950.

DISSENT TO AWARD NO. 4826, DOCKET CL-4779

The offending employe, claiming restoration to service in this case, stands convicted by the record, as confirmed by this Award, of betrayal of his employer's trust and of the interests of its patrons, with all the consequent possible losses to the Carrier through divergence of the business of its patrons to other carriers as a result of the discrimination by this claimant's offenses in favor of one patron.

This Board is not constituted to supplant the authority of a carrier in mitigation of the discipline imposed upon an employe who by betrayal of the trust imposed in him has forfeited his right to continuance of his employment.

(s) C. C. Cook
(s) J. E. Kemp
(s) C. P. Dugan
(s) A. H. Jones
(s) R. H. Allison