

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee.

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

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

(a) The action of the Carrier in holding an investigation on January 15, 1948, in accordance with notice of January 13, 1948, (Employees' Exhibit "4") to determine facts and place responsibility for the mishandling of a car arriving at Portola, California on November 25, 1947, and departing therefrom on November 26th, was in violation of the 10 day time limit provided in Rule 45 of the Clerks' Agreement for the holding of such investigations.

(b) The letter of reprimand, dated January 21, 1948, be removed from the personal record of Mr. C. E. Rowe (Employees' Exhibit "6").

(c) Mr. Rowe be compensated for wage loss sustained through action of the Carrier in declaring him disqualified from the position of Train Desk Clerk at Portola (Employees' Exhibit "6") from January 25th, 1948 to date he returned to service as a Crew Caller; and in addition thereto.

(d) He be compensated at the rate of pay of Train Desk Clerk for all service performed as Crew Caller from on or about February 20, to June 21, 1948, when he was reinstated as Train Desk Clerk (Employees' Exhibit "12").

OPINION OF BOARD: On November 25, 1947, the Claimant was a train desk caller at Portola, California. A car of ground barytes, consigned to the National Lead Company of Merced, California, arrived at Portola on said day and was erroneously billed by the Claimant as an empty car to Radum, California, as a result of which the contents of the car were dumped on the assumption that the same were of no value. Because of this incident, the Claimant was charged, on January 13, 1948, with negligence in the performance of his duties. An investigation was held two days later and on January 21, 1948, the Claimant was reprimanded and disqualified. He exercised his seniority to a position of crew caller on February 20, 1948. On June 21, 1948, the Claimant was reinstated as train desk caller at Portola, without compensation, however, for any loss of wages due to his disqualification as such.

The Claim is that the Claimant's record be cleared of the reprimand; that he be compensated as a train desk caller for the period he was out of

service from January 21, to February 20; and that he also be compensated at the train desk caller's rate for services performed as a crew caller from February 20, to June 21, 1948.

In support of the claim it is urged by the Employees that the Carrier violated Rule 45 because it did not conduct the investigation within ten days after the alleged offense was committed; that it violated Rule 30 by disqualifying the Claimant more than thirty days after he had established his qualifications as a train desk caller; and that the action of the Carrier in reprimanding and disqualifying the Claimant was arbitrary and capricious.

In explanation of its delay in conducting the investigation, the Carrier says that it was not aware of the improper handling of the car until January 6, and that it did not know, until January 13, which of its employes was responsible for the error. Manifestly, it would be wrong to apply a strict period of limitation against a Carrier in a case of this kind, where it was not in possession of the facts upon which a charge could be predicated. For this reason, Rule 45 must be regarded as directory rather than mandatory.

Rule 30 is a qualifying rule and has nothing to do with the responsibility of an employe for subsequent negligence or carelessness.

While the error with which the Claimant was charged was of serious consequence to the Carrier; the mitigating circumstances disclosed by the record might reasonably have been taken into account in dealing with the Claimant's responsibility and in fitting the penalty to the offense. We cannot say, however, that the Carrier did not act reasonably. The fact that the Claimant was reinstated is some indication of a reasonable approach of the problem on the part of the Carrier, and for us to disturb its determination would be to substitute our judgment, which we cannot do. There is no such showing of arbitrary and capricious conduct as would warrant the intervention of this Board.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employees 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 the evidence does not establish that the Carrier violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of June, 1950.