Award No. 5385
Docket No. CL-5304

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Alex Elson—Referee

PARTIES TO DISPUTE:

GRAIN CAR DOOR COOPERS, LOCAL 1286-S.1.

AFFILIATED WITH INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

EASTERN WEIGHING AND INSPECTION BUREAU

STATEMENT OF CLAIM: (a) That the respondent, Eastern Weighing and Inspection Bureau violated the rules, customs and practices of the collective agreement between the parties, effective March 1, 1946, as amended, in respect not here pertinent, in the discharge of JOSEPH SLAGER and AL. SCHRENKEL on or before November 26th, 1949.

(b) That JOSEPH SLAGER and AL. SCHRENKEL be compensated for all wage loss suffered from November 27th, 1949 to date.

OPINION OF BOARD: This is a discipline case. The claimants Joseph Slager and Al Schrenkel were discharged on November 26, 1949. On that date they were assigned to work at an elevator at Buffalo, New York. At 4:40 P. M., 20 minutes prior to the quitting time, at about one-eighth of a mile west of the elevator, they were arrested by the New York Central police. Each had a bag of corn weighing about 100 lbs. on his back. The officers found four other bags of corn in the automobile of Schrenkel. A total of 600 lbs. of corn had been sacked and carried to the auto on this day by the claimants.

The foreman of the Bureau was called by the police officers, and forthwith discharged the claimants after the situation was explained to him. Claimants were charged with Petit Larceny in the City Court of Buffalo on March 7, 1950, were tried and discharged by the Court on the basis of reasonable doubt.

The record shows that on September 10, 1945, a notice was posted which read as follows:

> "It has been brought to my attention that numerous complaints have been received relative to persons entering empty cars for the purpose of removing grain from the floor or back of lining. In some instances this has resulted in the destruction of the lining of the cars. Any employe of the Central Inspection and Weighing

Bureau* arrested for removing grain or destroying coopering or car lining will be discharged."

"*(Now Eastern Weighing & Inspection Bureau)"

One of the claimants admitted seeing such a notice.

On October 8, 1947, the Bureau wrote a letter to the secretary of the Union of which the claimants were members, which read as follows:

> "As a matter of information, it has been noted that some of our men, despite circular letters and repeated warnings to the contrary, are continuing to salvage grain from inbound cars. This grain is the property of the inbound carriers and to put a stop to this practice we intend to enlist the aid of the various police departments. Any employe apprehended taking grain can consider himself automatically removed from service."

This letter was read to the men at a union meeting in October 1947, and one of the union officials told the men that if they violated this rule, they would be acting without the support of union officials, including himself. This fact is not denied by the Organization.

The agreement between the parties contains no provisions with reference to the making of charges and holding a hearing on the Bureau's property, and the record also shows that no such hearing was held. In support of the claim, affidavits are introduced signed by various individuals—claimants and fellow employes. The Bureau attached to its submission a copy of the transcript of the evidence taken at the time of the trial of the claimants. The record as so made establishes the facts as above set forth.

Although the claim originally filed charged that the discharge was made without "substantial cause, without charges and without a hearing in violation of the working agreement * * *", in the submission to this Board this language is deleted from the claim. The only charge is that the Bureau violated the rules, customs and practices of the collective bargaining agreement between the parties effective March 1, 1946. No evidence was submitted to the Board indicating in what respect the Bureau had violated the "rules, customs and practices of the collective bargaining agreement between the parties".

In the absence of a rule requiring a hearing, this Board cannot say that the agreement was violated because no hearing was given. The rule is well established that this Board will not substitute its judgment for that of a carrier where there is substantial evidence in the record to support the action taken. This rule had enunciation and expression in instances where the carrier conducted an investigation and hearing on the property. In the absence of a hearing on the property, it is incumbent on this Board to scrutinize the record with considerable care. This we have done, and we believe the action of the Bureau was fully warranted.

Both claimants have been employed by the Bureau or its predecessors for many years. There is a suggestion that because of this circumstance the Board should mitigate the penalty here imposed.

The offense in this case was a serious offense in the light of all the circumstances, and we cannot say that the Bureau has acted arbitrarily or in abuse of its discretion in imposing a comparable penalty.

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 the Agreement was not violated.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of July, 1951.