

Award No. 5426

Docket No. CL-5427

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Glenn Donaldson, Referee.

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That H. E. Lawrence, former car cleaner, Prairie Junction-Mulberry, Fla. shall be returned to service with seniority, vacation and all other rights unimpaired.

2. That H. E. Lawrence shall be paid the rate of pay applied to car cleaners at Prairie Junction-Mulberry from June 3, 1948 until restored to service.

OPINION OF BOARD: Claimant, a car cleaner, was dismissed from service for allegedly deserting his post of duty without authority on the morning of June 3, 1948. The evidence concerning the reason for his leaving his post is in direct conflict. The claimant contends that he was discharged by the section foreman. The Carrier contends that he quit voluntarily while being warned by the section foreman that unless troubles ceased at this point the Superintendent would let the whole bunch go.

The record reflects that considerable dissatisfaction and dissension existed. Events leading up to claimant's departure from his place of work would indicate that no love was lost between the conversationalists, claimant and the section foreman. Claimant had a short time before complained to Carrier's representatives of drinking by the lead car cleaner, a brother of the section foreman, which resulted in the resignation of the afflicted employe. Claimant admitted that he understood that he was working for the Superintendent and that the section foreman was merely his representative. Because of the natural antagonism existing between the two participants, we believe that a prudent man would have awaited direct communication from the Superintendent before leaving his post of duty, particularly when up to that moment he knew that he had committed no dischargeable offense.

Where the testimony taken upon hearing is replete with conflicts, appellant bodies such as this give great weight to the findings of the trier of the facts, provided his actions appear free from bias and prejudice. A hearing officer, because he can observe at first hand the demeanor and judge

of the forthrightness of the witness while he testifies, has a considerable advantage over the reader of the printed page and his findings are entitled to great respect.

We are satisfied, based upon a reading of the transcript of the hearing, that the hearing officer was free from bias and prejudice and that a fair trial was accorded claimant. In fact, all witnesses indicated their satisfaction with the manner in which the hearing had been conducted. We must conclude that claimant left his post of duty deliberately and of his own free will without good cause.

We find nothing in this record to justify interference on the part of this Board with the disciplinary measure taken by 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 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 claimant was accorded a fair trial. That Carrier's finding that claimant deserted his post of duty is supported by the evidence. That the disciplinary action taken was not arbitrary or without good cause.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 8th day of August, 1951.