

Award No. 5498

Docket No. CLX-5431

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

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

(a) The agreement governing hours of service and working conditions between the Railway Express Agency and the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees, effective October 1, 1940, was violated at St. Louis, Missouri, in the treatment accorded J. D. Holden in dismissing him from service as the result of an investigation conducted April 3, 1948; and

(b) J. D. Holden shall be restored to service with seniority rights unimpaired and compensated for wage loss sustained, beginning April 8, 1948 and subsequent thereto, until date of retirement, January 14, 1949.

OPINION OF BOARD: The claimant in this case admitted his dereliction of duty, in violation of the rules, in a matter affecting the basic responsibility of his position which was that of express messenger. Thus his offense must be considered to be very grave. However he has over thirty years of service without any record of prior discipline in evidence.

In Award No. 3458 we said:

"We cannot agree, however, that the Carrier was acting within the maximum limit of a reasonable exercise of judgment when it dismissed these men from the service. We think a three months suspension from service would be a maximum penalty for the offense committed when all the evidence and circumstances are impartially considered."

While that case is not identical with this case, both involve employees with clear service records who failed to fulfill a basic responsibility of their position. Under the circumstances here we think a three month suspension to be the maximum penalty which reasonable minds would consider appropriate.

Within a period of three months after the dismissal the Carrier offered to reinstate the claimant without reparations. That offer was declined by the Organization. The accumulation of wage loss thereafter was by claimant's

own choice. Under such circumstances the wage loss is not chargeable to the Carrier and the claim therefor must be denied.

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 Carrier violated the Agreement.

AWARD

Claim for restoration to service with seniority rights unimpaired is sustained.

Claim for compensation for wage loss is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1951.