

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, 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 September 1, 1949, was violated at St. Louis, Missouri in the treatment accorded M. H. Kemper, in dismissing him from service January 26, 1951, as the result of investigation conducted January 24, 1951; and
- (b) M. H. Kemper shall be restored to service with seniority rights unimpaired, and compensated for wage loss sustained beginning January 20, 1951 and continuing, up to the date of his return at the rate of \$273.90 basic per month.

OPINION OF BOARD: This is a companion claim to the one involved in Docket CLX-5732, Award 5835. It involves the same incident as was involved there. The gasoline which was received there was procured from the tank by M. H. Kemper, the employe on whose behalf the claim is made here.

Here, as there, a proper investigation was held and the truth of the charge was established. Under the facts and circumstances the carrier had the right to take disciplinary action.

Again, here as there, the questions requiring consideration are those of whether or not the Division has the right to interfere in the matter of degree of discipline, and if so, whether or not the facts and circumstances justify interference.

What was said in the Opinion in Docket CLX-5732, Award 5835, with regard to the right of the Division to examine into the issues contained in a disciplinary proceeding and as to the approach to be made in the consideration of the issues is adopted by reference as a part of this Opinion.

On consideration of the claim in that light it appears that Kemper had over 30 years of seniority. The act was voluntary and known to be contrary to regulations. On one previous occasion he allowed gasoline to be taken

under circumstances which are not made clear. There is no evidence that there was any purpose to willfully violate regulations. There is an inferential suggestion that the present instance may have been a repetition of other like incidents but this finds no support in the record. His record as to service, except as to one incident, is clear. That incident had to do with a matter of personal conduct and for it he was disciplined. Except as to the one incident of which mention has been made and the present incident, there is nothing to indicate that he has not been faithful in his service to the carrier. If, as he says, he made out a charge ticket and expected the gasoline to be paid for, no moral turpitude was involved but only an infraction of duty. In any event the amount involved was slight and the gasoline was not used and did not leave the property.

Taking these facts and the other elements to be considered in cases of this character, to the extent that they appear, it is the conclusion that the discipline imposed was of unreasonable severity.

It is the further conclusion that Kemper should be returned to service with his seniority unimpaired but that his record should not be cleared of the charges nor should he be compensated for any loss of wages.

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 Employee involved in this dispute are respectively Carrier and Employee 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

The act of the carrier in dismissing Kemper from the service was discipline of unreasonable severity.

AWARD

The claim for restoration to service with seniority rights unimpaired sustained. In all other respects claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1952.