

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, 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, Inc. and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, effective October 1, 1940, was violated at Warren, Ohio, in the treatment accorded D. E. Welker, in dismissing him from the service as a result of alleged investigations conducted July 29, 1946 and July 30, 1946; and

(b) He shall now be restored to service with seniority rights unimpaired and compensated for monetary losses sustained, retroactive to and including July 24, 1946.

OPINION OF BOARD: Claimant Welker, who was employed as a driver at Warren, Ohio, was discharged after investigations on three separate charges: first, of insubordination in use of improper language to Depot Agent E. P. Gibson on July 17; second, of severe damage to left front fender of truck in his charge on July 19; and, third, of failure to report street accident on July 22.

Claimant was local representative of the Brotherhood and the charges against him followed by only a few days a letter he had written his General Chairman reporting complaints against Agent Gibson, with copy to E. C. Spoerr, the agent who conducted the examination and assessed the penalty. At the hearing on the insubordination charge, Spoerr read from claimant's letter regarding Gibson and asked claimant: "Why do we have this trouble with you?" The question and the letter had no connection whatever with the charge being investigated and is of value only in showing the prejudice of the hearing officer.

But if we find that claimant's discharge was not justified by the record in the first investigation due to such prejudice and the unconvincing evidence, we must still consider the other two charges as grounds for discharge. As to the second charge, claimant testified that on July 19 he pulled in back of a store to make a delivery and parked "on a slant." When he returned he found his truck parked against a cellar twenty feet away with a fender

smashed. His only defense was that some other driver might have moved it during the few minutes of his absence.

As to the third charge claimant testified that on July 22 at 3:30 P. M., at the Packard plant where he made a regular LCL pickup, he left his truck running while he went in the nearby cop's shanty to get a pass. When he returned he saw his truck rolling down the driveway where it collided with a parked passenger car causing substantial damage. He admitted that the operators' rules required that he shut the motor off and set the emergency brake as well as put the truck in gear when parking.

Although admitting that he knew the rule requiring report of all accidents, claimant failed to report this accident even orally until the afternoon of the following day when the agent made inquiry of him about it as a result of complaint by the owner of the car he had damaged. Then he delayed until another day the handing in of written report which the rule required to be completely filled out at the scene of the accident.

By his own admissions claimant was guilty of deliberate violation of the rule requiring report of accidents and of each of the three provisions of the rule requiring that when parking truck should be placed in gear, the hand brake set and motor stopped. Being admittedly guilty of rule violation which might well have caused serious damage, carrier in assessing penalty could properly consider his past record, which showed four prior accidents, all indicating careless driving, within the calendar year. On such a record we cannot say that claimant's discharge was arbitrary or capricious.

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1953.