

Award No. 6231

Docket No. CL-6350

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
RR. CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.;
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN
ANTONIO, UVALDE & GULF RR. CO.; THE ORANGE &
NORTHWESTERN RR. CO.; IBERIA, ST. MARY & EASTERN
RR. CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.;
NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA &
NORTHERN RR. CO.; SAN ANTONIO SOUTHERN RY. CO.;
HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH
SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE
CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO.
(Guy A. Thompson, Trustee)**

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

(a) The Carrier violated the Clerks' Agreement when it discharged Mr. John A. Shelton, Depot Passenger Agent at Houston, Texas, on charges that were unproven. Also

(b) Claim that Mr. Shelton be reinstated with all rights unimpaired and be compensated for all losses sustained.

OPINION OF BOARD: This dispute arises between the parties, by reason of the discharge from service by the Carrier of John A. Shelton, Depot Passenger Agent, Houston, Texas and the Organization alleges such charges were not proven, as raised by the Carrier. The Organization further requests this Board to require the Carrier to reinstate Shelton with all rights unimpaired and that he be compensated for all monetary losses sustained, by reason of such discharge.

The record discloses that Mr. Shelton entered the service of Carrier on or about October 4, 1942. The Carrier alleges that on June 11, 1952, John Shelton, Depot Passenger Agent at Houston, Texas, handed to Frank Fullerton, Card Ticket No. 10455 for transportation from Houston to Kingsville, Texas, and it is further alleged by Carrier that Shelton would arrange with the train conductor for Fullerton to obtain through transportation to Brownsville, Texas, without charge, other than to pay for the ticket to Kingsville and by such arrangement, Fullerton was to pay for said ticket to Pullman Conductor Shea on the train. That upon arrival at Kingsville, some arrangement had been made with the conductor, one Jenkins who boarded the train at Kingsville and was furnished transportation to Brownsville, without charge, although he was furnished a hat check by Jenkins, as evidence he had valid transportation. Carrier claims the Ticket No. 10455 bore an issuance stamp of May 28, 1952, but there is no evidence as to how or when the ticket, or by what means, it came into the possession of Mr. Shelton. Letter to Shelton, dated July 15, 1952 was delivered to him, setting forth the charges made against him, and notice of Investigation of such charges was set forth in the notice, to be heard by the Carrier on July 22, 1952. Investigation was held and as a result, Shelton was discharged from the service, July 24, 1952.

We conclude the Investigation as held by Carrier was in strict compliance with Rule 27—"Investigation and Hearing" and regular in all respects as to procedure as provided by the current Agreement. The Organization contends the evidence produced wholly failed to sustain the charge alleged, and request compensation and reinstatement for such failure.

Nothing in the record indicates the Carrier has acted in an arbitrary or capricious manner, nor is there any evidence of bad faith on the part of Carrier toward this employe. It is not the function of this Board to substitute its judgment for that of the Carrier, in discipline cases where the evidence reasonably tends to support the contention of Carrier. For that reason we must exercise a high degree of caution in reviewing cases of this nature. In the case before us, the Organization contends the charges as alleged are unproven, which brings us to the proposition that we are being called upon to determine a question of fact. This Board has held in numerous Awards, that we cannot substitute our judgment for that of the Carrier in discipline cases, where there is no evidence the Carrier acted in an arbitrary, capricious manner, or showed evidence of bad faith toward the employe. See Awards 1497, 2621, 2767, 3172, 3185.

Based on the record and a long line of awards supporting the contentions of the Carrier, we hold this Board is not justified in substituting its judgment for that of the 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 Employe involved in this dispute are respectively Carrier and Employe 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 employe was allowed a fair and impartial hearing by the Carrier. That Carrier did not act in an arbitrary or capricious manner, or evidence bad faith toward the employe. Nor does the record disclose any violations of the provisions of the existing Agreement between the parties.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of June, 1953.