

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when, on February 20, 1953, it dismissed furloughed Storehouse employees, J. M. Mills and C. E. Norris, on charges unproved and failed to accord the said Claimants Mills and Norris due process, and

(b) Because of the Carrier's arbitrary and capricious action, Claimants Mills and Norris shall be restored to the Carrier's service with rights unimpaired and compensated for all wage loss sustained.

OPINION OF BOARD: This is a discipline case involving two furloughed employees. These employees were removed from service on February 20, 1953 while filling temporary vacancies. They were charged with insubordination for refusing to comply with instructions given by the Assistant General Foreman. At a later date at their request they were given an investigation, their discharge was the result of the investigation.

It is contended that Carrier's action was arbitrary and capricious and that these employees be restored to service with rights unimpaired and compensation for all wage loss sustained.

This request was based in part on allegations the employees cases were prejudged and that the official presiding at the investigation should have disqualified himself by reason of his previous activity in the original removal from service, and was not the "proper officer" as provided in Rule 40 to conduct the investigation.

Also that there were extenuating circumstances which have been considered which favored Claimants, in that both contended they did not refuse to perform the work in question but simply asked that the Organization committee be called in prior to their undertaking of the assignment. Also it is contended that the sand loading operation was later changed.

Respondent Carrier contends that instructions of a supervising officer were not obeyed and the only action that could be taken after such refusal

was removal from service. Also the proper officer under Rule 40 did conduct the investigation and discharges were based on substantial evidence of insubordination.

Apparently this dispute is the result of a misunderstanding. The employees involved being under the impression that the organization committee had presented their objection to working under conditions then prevailing in this operation. However, they should have gone ahead on the assignment as directed as the Agreement provided remedies in such circumstances and by their refusal they defeated their own claim.

In the matter of prejudgment and the proper officer to conduct the investigation the evidence here speaks for itself. The work should have been performed and redress sought under the rules of the Agreement. Otherwise an employee with immunity could refuse any task assigned on his own interpretation of the meaning of rules which would result in a chaotic condition. In this connection see Awards 3218, 3260 and 3340.

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 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 26th day of March, 1956.