

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**

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 Railway Express Agency, Inc. and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective September 1, 1949, was violated at the Los Angeles, California Agency September 15, 1953 when Carrier failed to prefer charges against Driver H. E. Marnell within seven (7) days after it had knowledge of the alleged violations with which he was charged; and

(b) His record shall now be cleared and the thirty (30) demerits assessed as a result of Carrier's action shall be removed.

OPINION OF BOARD: Claimant was assessed 30 demerits against his record, as a result of an investigation, relative to his failure to deliver an express shipment from the Los Angeles, California Agency of Carrier.

It is contended in support of the claim that Rule 29-Investigations was violated on the proposition that investigation was not held within the time limit as specified therein as to notice. Carrier denies this contention on the theory that investigation and notice thereof was had within the time limit specified in the rule from the time it had actual notice of Claimant's failure to deliver the two shipments in question. Carrier was made a defendant in a suit in the Superior Court relative to failure to deliver the shipments to a consignee. It contends that investigation then made revealed Claimant's failure to deliver the shipments. The evidence taken at the investigation shows that Claimant failed to deliver the shipments by reason of a picket line, returned the shipments on two different dates and the same were marked "On Hand". On the important point as to giving notice of this failure to his superior the Claimant creates some doubt in his testimony. Also he apparently failed to comply with Bulletin issued February 27, 1948 relative to notifying his superior at the Agency in the matter of picket lines on his territory.

In view of the mildness of the disciplinary action taken we do not deem it proper for us to interfere with the action taken by Carrier. It may well be that others were in a part to blame for these shipments being delayed in delivery, however, that is not a matter before us for determination.

Also a question is raised relative to the method of conducting the investigation, in that, the person preferring the charges against Claimant was the witness used by Carrier to show that fact situation on Claimant's alleged failure to properly perform his assigned duties and although such official did not conduct the investigation it was he who advised Claimant of the findings made. In view of the disposition we have made of this case we deem this to be a moot question herein. It is suffice to say that we do not consider such a method of procedure to be the best practice and that it is one which could lead to difficulties.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June, 1956.