

Award No. 8195
Docket No. CL-7579

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney A. Wolff, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

Discipline of sixty days' suspension imposed upon Fred Wise, Laborer, Stores Department, Holton Street Shop, Cleveland, Ohio, Lake Division, be removed from the Claimant's record and that he be reimbursed for all monetary loss sustained. (Docket C-744.)

OPINION OF BOARD: On June 26, 1954, claimant at about 3:30 A. M. of the first day of his two rest days created a disturbance in the public restaurant operated by the M.B.A. and located on the Carrier's property in Cleveland, Ohio. He was arrested by one of Carrier's patrolmen and turned over to the Cleveland City Police. The claimant subsequently pleaded guilty to a charge of assault and battery and on paying the patrolman \$30.00 to cover damage to his clothing and \$5.80 as court costs, his sentence of thirty days in jail was suspended and he was placed on probation for six months.

Promptly thereafter claimant was brought to trial before the Carrier on the charge "disorderly conduct at M.B.A. Restaurant at approximately 3:30 A. M. D.S.T., June 26, 1954, causing disturbance and refusing request of Patrolman McMillen to leave the property resulting in arrest and conviction of Assault and Battery, also violation of second paragraph Rule E, Pennsylvania Book of Rules, which reads as follows: to enter or remain in service, employes must be of good character and must conduct themselves at all times, whether on or off company property in such manner as to not bring discredit upon the company."

At the Company trial, claimant denied any knowledge of this Rule. The charge of violating the Rule was voluntarily dropped when it developed that claimant's duties were not prescribed by the Pennsylvania Book of Rules. Carrier concedes this alleged violation "was dropped and not used as a basis for applying discipline in this case".

By notice dated July 21, 1954, claimant was given the discipline now under review for the offense:

"Disorderly conduct at M.B.A. Restaurant at approximately 3:30 A. M., D.S.T., June 26, 1954 causing disturbance and refusing

request of Patrolman McMillen to leave the property resulting in arrest and conviction of Assault and Battery."

Essentially it is the position of the Brotherhood that since the offense complained of was committed by the claimant while in an off-duty status, he was not subject to the Carrier's discipline. On the other hand the Carrier contends that in the circumstances here present, its imposition of discipline was proper and cites a number of awards of this Board in support.

Examination of such awards, however, will indicate that discipline was upheld on the basic finding that the conduct involved was harmful and detrimental to the Carrier even though committed while off-duty.

In this case with the deletion of the charge of violating Rule E all that remained was the charge of disorderly conduct, causing a disturbance and refusing to leave the premises. For this the claimant was arrested, adjudged guilty and he paid the full penalty imposed by the Cleveland Court. No justification exists in this case for further punishment, this time by the Carrier.

Now, if the claimant's misconduct had been of such a nature as to have brought discredit upon the Carrier, or if it had been harmful or detrimental to it, we would have denied the claim, regardless of whether or not a violation of Rule E was specified in the charge. However, we find that the offense was not of such a nature and our judgment in this regard is supported by the Carrier's own readiness to withdraw that portion of the charge claiming a violation of Rule E.

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 Carrier violated the Agreement.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January, 1958.