

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK CENTRAL RAILROAD, BUFFALO AND EAST

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the New York Central Railroad Company, Buffalo and East:

1. That carrier violated the agreement by conducting an improper and illegal hearing on November 29, 1954 in the case of Mrs. Esther Eckhart, Ticket Seller at Central Terminal, Buffalo, N. Y.
2. That carrier restore Mrs. Esther Eckhart to former position with full seniority and reimburse her for all wage loss sustained as a result of this violation of the Agreement.

OPINION OF BOARD: Under date of Nov. 26, 1954, Carrier wrote Claimant as follows:

"In accordance with Rule 22 of the Clerks' Agreement you are hereby notified that a hearing will be held in my office, Central Terminal, Buffalo, N. Y. at 4:00 P. M. on Monday, Nov. 29th.

"The charge is carelessness and lack of interest in your position as Ticket Seller in the sale on Sept. 20th, of three (3) round-trip coach tickets, Buffalo to Adel, Ga., and collecting only the one-way fare—a shortage of \$89.83. Your incompetence in the discharge of your duties as Ticket Seller is getting worse each day.

"If you so desire you may have representation at this hearing."

This letter was signed by W. W. Miller, Ticket Agent, who also was the only Carrier representative at the hearing. Claimant and her representative were the others present. The hearing consisted of an interrogation of Claimant by Miller. The interrogation for the most part took the form of a recital by Miller of some sixteen mistakes by Claimant between December, 1953 and September, 1954, in addition to the September 20, incident; and of replies by Claimant which denied incompetence but did not deny the errors themselves. In addition, Miller put into the record a number of disciplinary measures incurred by Claimant between 1949 and 1954.

At the outset of the hearing, Miller announced that in addition to the September 20th incident described in the Nov. 26 notice, Claimant was charged with two other specific derelictions on October 25th and November 22nd.

Under date of December 2, 1954, Claimant was given a notice of dismissal which read:

"NAME	—Esther F. Eckhart
EMPLOYMENT	—Ticket Clerk
DATE OF OCCURRENCE	—October 25—September 29—November 22—1954
PLACE	—Central Terminal Ticket Office, Buffalo.
DICIPLINE	—Dismissed.
CAUSE	—Incompetence in performing duties, errors in ticket sales, resulting in shortage in accounts and inconvenience to patrons, indicating carelessness and lack of interest.

/s/ H. D. Johnston
Superintendent"

The claim is based upon Rule 22—Discipline, which requires that an employe be apprised of the charge against him at a reasonable time prior to the hearing, and also that when employes are subject to discipline, the same shall be made effective within 30 days from date irregularity was known by proper official. It is contended that the addition of the two specific charges at the hearing and the consideration of the past mistakes of Claimant were violations of the rule. It is also contended that none of the "Dates of Occurrence" listed in the dismissal notice coincide with the date of the incident described in the charge, and that the decision in the case was not made by the official who conducted the hearing.

Certainly, Carrier's conduct of this investigation is subject to some criticism. The addition of charges at the start of a hearing is not "a reasonable time prior to the hearing." The September 29 date in the Notice of Dismissal is obviously a typographical error for September 20, but Carrier has a duty to be precise in these matters. The conduct of the hearing by Miller, wherein he constantly insisted that Claimant should agree that she was incompetent, was not in accord with good practice in the holding of these disciplinary proceedings. All in all, the procedure demonstrated a laxness on the part of the Carrier in complying with the rule which is to be deplored.

Despite this, however, we do not think that Claimant's rights were abridged in this case so that her claim can be sustained. She admitted the precise offense with which she was charged. The evidence of Claimant's past mistakes could properly be considered by Carrier for the purpose of determining the degree of discipline to be assessed for the admitted error of September 20, as well as the record of past disciplinary action against her. We cannot say, in view of the evidence in the record, that Carrier's determination to dismiss Claimant was an arbitrary or capricious determination; the additional charges leveled at the beginning of the hearing were not necessary to such a determination, and, while improper as indicated above, do not justify setting aside Carrier's decision.

Awards 7088, 8020 and others are cited on behalf of Claimant, to the effect that the official who conducts the investigation must make the decision as to whether the charged employe is guilty or innocent, and it is urged that that was not done here. The fact that the dismissal notice was signed by the

Superintendent rather than by Miller does not alone support the conclusion that the Superintendent rather than Miller made the initial determination of guilt. In any event, it must be noted that in this case Claimant admitted the mistake with which she was charged, so that all that really remained was to decide on the penalty. The cited awards involved different factual situations and are distinguishable from this case.

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: A. Ivan Tummon
Executive Secretary

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