

Award No. 8494
Docket No. CL-7376

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

THE CINCINNATI UNION TERMINAL COMPANY

STATEMENT OF CLAIM: Cincinnati Union Terminal Company arbitrarily disciplined Red Cap Jack Shores on the charge, "To explain your poor percentage during last half of July, 1954 and to review your record." Mr. Shores was suspended from service for ten days which action was unjust and inconsistent with Carrier's own requirements as set forth in Carrier's bulletin of November 7, 1952.

Claim is for Mr. Shores' record to be cleared of the discipline and that he be compensated for all monetary loss suffered because of said discipline.

OPINION OF BOARD: This is a discipline case.

From the record in this case, the employee Red Cap Jack Shores was charged "To explain your poor percentage during the last half of July, 1954, and to review your record." The charge is not clear and does not properly apprise the employee of the charge against him. However, a review of the proceedings and arguments seems to indicate that the charge was understood by all concerned and could be better phrased:

"Failure to properly perform your duties as a Red Cap during the period 7/15/54 to 8/1/54."

The record is devoid of any showing of misconduct, malingering, insubordination, malpractice, or any wrongful or deceitful act on the part of the claimant, Red Cap Jack Shores. He is asked to explain his poor showing, but there is no proof it is a poor showing. To ask an employee to explain something, and at the same time assuming that something was wrong, without a showing that it is per se wrong, or at least unusual, is a violation of the agreement. Here the employee was not last each of several consecutive 15-day periods, nor was he last a large percentage of such periods over a six or twelve month interval. Someone must be last each time. Unless an employee is consistently so, (as it would seem that luck and the law of averages would require that this not always be the same employee) the mere fact of being last would not be cause for discipline, nor would the failure to explain being last be a just cause for discipline.

The statement of Stationmaster L. O. Brown at the hearing of August 17, 1954, is the only critical statement of Red Cap Jack Shores' work, and is as follows:

"We have noticed this man Jack Shores engage in conversation when he should have been carrying bags and on numerous occasions noticed him wheeling around one or two bags on a truck as if he was in a trance."

The statement is general and difficult to defend. While it may be difficult to enumerate all the infractions of an unsatisfactory employe, it is not too much to expect that at least one or two will be detailed as to date, time and place, so that an answer may be made. Good supervision requires this to be done in the Carrier's interest before resort to discipline.

In the course of the record there are two items of interest which seem to be foreign to these proceedings and should not be a part hereof.

A. The Bulletin—Nov. 7, 1952 by Stationmaster L. O. Brown is at most a warning. But a warning that a job may be abolished if the work is not sufficient to earn 70%. Actually the percentage will depend on many factors other than employe aptitude and appliance such as the volume of traffic-employe ratio, wage/package-charge ratio, etc. However, in no sense could this Bulletin be construed as setting up work stands on which discipline could be based.

B. The record of past offenses should not be considered until the question of guilt has been determined, at which time past offenses may be considered in assessing punishment.

We are not unmindful of Awards 4205 and 5892 which have been rendered on similar charges nor are we unmindful of the importance to the Carriers that this work be done properly. But here we are faced with the facts that (1)—The defendant was on the bottom of a mathematical percentage list twice in a six months period. (2)—The general statement of Stationmaster L. O. Brown that he had seen the defendant Shores in conversation when he should have been carrying bags, but there is no mention of time, date or place.

The contract Rule 11 provides for a hearing of charges. The charge must be sustained before discipline can be assessed. There being insufficient evidence to substantiate the charge, the Agreement was violated.

The claim is sustained. The disciplinary action against Red Cap Jack Shores should be expunged from the record and he should be compensated for the ten days lost less other compensation earned in that period.

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 Agreement was violated.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1958.