

Award No. 8711
Docket No. CL-9570

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(a) The Agreement governing hours of service and working conditions between the Louisville and Nashville Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective January 1, 1938, and subsequent revisions, was violated by the Carrier at Louisville, Kentucky, on April 18, 1956, in the treatment accorded Record Clerk G. J. Mittel by dismissing him from service as a result of an investigation conducted at South Louisville, Ky., on April 3, 1956.

(b) Employee G. J. Mittel shall be restored to service with all rights and privileges unimpaired and compensated for wage loss sustained on April 18, 1956, and subsequent thereto until restored to service.

OPINION OF BOARD: The claimant, a Record Clerk at the Carrier's South Louisville, Kentucky, Yard Office, was dismissed by the Carrier on April 18, 1956, on charges of insubordination.

The alleged insubordination is based on the following facts, all of which the claimant admits:

At the time of his dismissal, claimant's position was a seven day position with assigned hours 3:00 P.M. to 11:00 P.M. Monday through Friday, Saturday and Sunday being rest days. At 9:20 A.M. on Saturday, March 24, 1956, one of his assigned rest days, claimant received a telephone call from the Assistant Chief Clerk, Mr. Zoeller, who asked him to report for work that day at 3:00 P.M. Claimant declined this overtime work and stated that he would not report. Zoeller notified Trainmaster Maguire of claimant's refusal to accept the call and was instructed to contact claimant again and to inform him that he must accept service by personal order of the trainmaster. Zoeller

relayed these orders to claimant but the latter again refused to accept service, stating that he did not give a "damn" what anybody said.

In our view, these facts suffice to establish insubordination on the part of claimant. It is true that he was on his own time on Saturday, the day the incident occurred, and for that reason the awards cited by Carrier are not altogether pertinent (Cf. Awards 7921, 5170 and 4886). On the other hand, we subscribe to the general proposition that centralized management and a reasonably disciplined organization is particularly essential to this industry and the safe, efficient and economical operations of the railroads. We are of the opinion, therefore, that even if claimant strongly believed that the Carrier was requiring him to perform work contrary to the Agreement (and on that point there is some question because of the language of Rule 3 (n) 5), he should have reported to work as directed and sought redress under the grievance machinery of the Agreement. There is no indication in the record that he had been harassed by management or required to report to work on other rest days to an unreasonable extent. Nor does it appear that this particular incident was part of a program to provoke or inconvenience claimant. Under the circumstances set forth in this record, he might well have cooperated with his superiors when they expressed need of him. We find no alternative to the conclusion that he was insubordinate.

Pursuant to Rule 19 of the Agreement, a hearing was held upon due and proper notice of the charges against the claimant. He was afforded a fair opportunity to present his case fully and to examine and cross-examine witnesses. However, petitioner claims that the hearing was not fair and impartial as prescribed by Rule 19 and therefore claimant's dismissal was in violation of the Agreement. Specifically, petitioner points to the following as objections: (1) Trainmaster Maguire presided over the hearing but also made the formal charges against claimant; (2) the Superintendent rendered the dismissal decision, although he did not preside over or even attend the hearing, and (3) the first step in the appeals procedure was from the decision to the Superintendent.

We view these objections as perfectly valid and the Carrier would be well advised to correct its hearing procedures accordingly without delay. See Awards 8020, 7088, 7021, 7008 and 6087. (It is advisable that Carrier correct the condition complained of in (2) above, although there is some question as to its invalidity inasmuch as there is no showing that Maguire did not make the initial decision and then recommend it to the Superintendent.)

Nevertheless, in the setting of the facts before us, these shortcomings do not constitute reversible error, for claimant was not unduly prejudiced by them since all relevant facts, upon which our finding of insubordination is predicated, are admitted and there is no material way in which claimant's case was injured by those defects.

We do not consider it inappropriate to comment that the punishment meted out is more severe than this Referee deems appropriate, particularly since claimant worked until 11:00 P.M. the night previous to Zoeller's 9:20 A.M. call. However, the penalty does not exceed the very considerable latitude the Carrier possesses in assessing punishment and we, accordingly, are not disposed to substitute our judgment on the point for that of the Carrier.

In the light of all the circumstances mentioned above, we shall deny the claim.

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 Employee involved in this dispute are respectively carrier and employee 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 4th day of February, 1959.