

Award No. 8805
Docket No. CLX-9204

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

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 Employes, effective September 1, 1949, was violated at the Far Rockaway, N. Y. Agency in the treatment accorded Alfred G. McNeill in dismissing him from service as the result of alleged investigations conducted June 29—July 1, 1954 and July 29, 1954; and

(b) He shall now be returned to service with seniority rights unimpaired and compensated for wage losses sustained retroactive to and including June 18, 1954.

OPINION OF BOARD: This is a discipline case involving dismissal of Alfred G. McNeill, seniority date of June 19, 1927, who hold the position of "Platformman Clerk Driver" at the express office in Far Rockaway, New York. The Organization contends claimant was not guilty of the charges made against him but nevertheless asserts "the sole question to be determined in the case is did Carrier comply with the provisions of Rules 29 and 30 in disciplining Claimant McNeill and was he accorded due process?"

Rule 29 provides in pertinent part that a seniority employe shall not be disciplined or dismissed without investigation, but that he may be held out of service pending investigation. Rule 30 states: "The right of appeal by employes or their representatives in the regular order of succession up to and including the highest official designated by the Management to whom appeals may be made is hereby established." This rule further provides that: "When appeal is taken, further hearing shall be granted, if requested of the official to whom appeal is made."

Claimant McNeill's immediate superior was Agent H. I. Shatraw, who was in charge of the Far Rockaway express office. On June 18, 1954 claimant was suspended from service pending investigation. Charges were preferred against him in writing and an investigation was conducted on June 29, 1954 by Senior Agent F. A. Pennington. Agent Shatraw was the principal complaining witness. On July 7, 1954 Agent Pennington issued decision that claimant was dismissed from the service. The Organization's General Chairman then appealed this decision to Superintendent R. H. Peterson. The appeal letter requested the Superintendent to revoke the dismissal decision but stated that if he was not willing to take such action, further hearing was requested per Rule 30. The Superintendent indicated he did not concur with the Organization's position concerning the validity of the initial decision, but granted the request for further hearing. Superintendent Peterson conducted the hearing on appeal, following which he sustained the decision of dismissal. Thereafter the matter was appealed to Carrier's General Manager, the highest officer designated to handle appeals.

Contention is made in claimant's behalf that he was denied due process as required by the Agreement because the first appellate officer, Superintendent Peterson, initiated the disciplinary action by directing suspension of the aggrieved, and by preparing the charges which formed the basis of the initial investigation conducted by Agent Pennington. It is urged that by virtue of this situation, the investigation was a sham and there was no effective right of appeal from Agent Pennington's decision.

The evidence indicates that the claimant became involved in very serious difficulty on June 18, 1954, and that Agent Shatraw became unable to handle him. It was the claimant himself who first telephoned Superintendent Peterson in New York City for the purpose of discussing the problem that had arisen, but the Superintendent was not in. Claimant left word asking that the Superintendent call back. Later the same day Agent Shatraw spoke with Superintendent Peterson on the 'phone and reported his difficulties with Mr. McNeill. It is not entirely clear whether this 'phone conversation took place as a result of the Superintendent returning the claimant's call, or due to the Agent telephoning the Superintendent. In any event, Mr. McNeill entered the Far Rockaway office while the 'phone conversation was in progress and asked to speak to the Superintendent. Claimant was placed on the line, at which time the Superintendent asked why claimant did not conduct himself properly and stated that charges would be preferred against him. Superintendent Peterson also instructed Agent Shatraw to suspend Claimant McNeill pending investigation. The extended list of charges preferred against claimant concerned matters within the knowledge of Agent Shatraw and others at the Far Rockaway office on the date in question, but the charges were issued from the Superintendent's office in New York City. The Carrier's explanation is that there was no typewriter in its Far Rockaway express office. Agent Shatraw's name was affixed to the charges as issued.

We are unable to conclude that claimant was deprived of his procedural rights under the Agreement. The manner in which the charges were prepared was not in derogation of any of his rights. It is to be noted, also, that claimant sought to involve the Superintendent in the subject incident from the very beginning, but later urged that Superintendent Peterson should have remained out of the picture until the matter reached him on appeal. Further, the claimant's insistence upon continuing his highly insubordinate conduct instigated Agent Shatraw's report to the Superintendent. Claimant McNeill may not properly assert as a defense any departure from the usual manner of handling discipline matters that was occasioned by his own be-

havior. Finally, we find that claimant was given full opportunity to defend himself against the charges preferred by the Carrier, and to refute the adverse testimony adduced. There is no evidence that the initial dismissal decision was directed by the Superintendent. Perusal of the transcript of the investigation indicates that no other decision was possible. The record of the appeal proceeding discloses that a full and fair hearing was also afforded claimant at that level.

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 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 17th day of April, 1959.