

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

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

CLINCHFIELD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerk's Agreement:

1. When on May 13, 1957 Mr. F. R. Foster, Attendant in the Erwin, Tennessee Storehouse was dismissed from the service of the Clinchfield Railroad Company on the basis of unfounded and unproven charges alledging violations of Company imposed rules.

2. (a) Mr. F. R. Foster shall now be returned to the service of the Clinchfield Railroad Company with all rights unimpaired including seniority, vacation and insurance and be compensated in the amount of a day's pay for May 14, 1957 and each subsequent work day thereafter plus additional pay for holidays and overtime that his position worked continuing until he is restored to service.

(b) Mr. Foster should now be paid for all time, outside his regular assigned hours, required of him attending hearings and investigations amounting to nineteen (19) hours at pro rata rate.

OPINION OF BOARD: As of April 22, 1954, Carrier's Superintendent issued a bulletin governing the transportation of employes in Carrier's vehicles. Soon thereafter Claimant's superior, Storekeeper Emmert, posted a copy thereof on the Storehouse bulletin board, with a note making the rule therein applicable to Storehouse employes, including Claimant. Said rule limited the number of employes who could be carried in a Carrier vehicle to those able to ride in the "cab seat."

On June 9, 1955, Claimant (an employe of eleven years' service, including eight on his existing assignment) was driving a Carrier jeep and carrying two other employes, including one Ted Harrison, when the jeep was struck by a railroad motor car. Harrison was seriously hurt. Thereafter, Carrier investigated the accident but took no action against Claimant. Harrison filed a civil suit for damages against Carrier, which was set for hearing on March 26, 1957. Claimant was to be a witness in said action.

On March 20, 1957, Claimant, after having told several Storehouse employees of his intention, removed the above-mentioned bulletin from the board to which it was clipped. He did so without obtaining permission from his supervisors. Three days later he gave said document to Harrison for use in court.

On April 23, 1957, Storekeeper Emmert notified Claimant in writing that an investigation would be held three days later on the charge of having removed from Carrier's files and having disposed of the document mentioned above and "any other irregularities or rules violations in connection therewith." After the investigation was held as scheduled, with Trainmaster Lonon in charge and Emmert as a witness, Claimant was told to return to work pending review of the record of the hearing and decision thereon. At the hearing Claimant admitted taking the document without getting permission to do so. On May 13, 1957, Claimant was told in writing by Emmert that he had violated Carrier's Rule 816 (which states that "no one may dispose of Company property . . ., except by proper authority") and was dismissed from service as of said date.

Claim was filed in behalf of Claimant on May 15, 1957. On appeal two more hearings were held. Final denial of Claim was made on July 1, 1957. The Employees notified this Division on August 1, 1957, of intention to file an ex parte submission, and same was received on September 6, 1957.

The Employees and their representative contend that (1) Claimant did not violate Carrier Rule 816, because, having once been posted on the Storehouse bulletin board, which was used also by the Employees, the document taken by Claimant became and was public rather than Carrier's property; (2) The record of the investigation established Claimant as honest, reliable, and respected; (3) the charges against him were not specific as required by Rule 22 of the Agreement; (4) the charges were preferred and the original decision was signed by Emmert, who was a main Carrier witness at the investigation; (5) in one of the appeal steps Treasurer Woodruff, who was a Carrier representative at the first hearing, rendered the decision; and (6) Carrier failed to conform to the time limit provisions for decisions contained in Rules 23 and 24 of the Agreement, the initial decision coming 17 days after the hearing, and Woodruff's decision having been sent 11 days after the hearing held by him

In the light of the principles which govern this Board's rulings in cases like the instant one, as set forth in Awards Nos. 8431 and 8503 and with due regard for the Employees' contentions summarized above, the Board now finds as follows: (1) Claimant was disciplined for proper cause. The bulletin that he admitted taking was Carrier property when issued and remained so during its "tenure" on Carrier's bulletin board, up to and including the minute when Claimant removed it. Substantial evidence showed that Claimant violated Carrier's Rule 816. (2) Rule 816 was and is a reasonable one. (3) Claimant was given reasonable opportunity to familiarize himself with said Rule and to know the disciplinary consequence of violating Carrier's Rules. (4) There is no evidence that said Rules were not applied to all employees without discrimination. (5) The discipline of dismissal was not unreasonably related to the seriousness of the proven offence. Claimant not only violated Carrier's Rule 816 but did so in a manner detrimental to the interests of his employer. True, it might be contended that the dismissal was not reasonably related to Claimant's good past record i. e., was unduly harsh in terms of said record. But in view of Claimant's admitted behavior in the instant incident, this Board is not disposed to modify the penalty on this ground. (6) As to the procedural defects alleged by the Employees, the Board

finds as follows: (a) The charge on which Claimant was found guilty was specific, and Rule 22 of the Agreement was not violated. (b) Claimant's rights were not prejudiced by the fact that Emmert, who signed the notice of dismissal in behalf of Lonon, the hearing officer at the first investigation, testified at said investigation. (c) Nor were his rights prejudiced by the fact that one of the appeals decisions was rendered by Woodruff, who was a Carrier representative at the first hearing. Woodruff did not testify at said hearing; he did nothing but ask a few questions thereat. (d) But, although Claimant's rights were not substantively prejudiced by the fact that the original decision was transmitted to Claimant 17 rather than 10 days after the first hearing, or by the fact that Woodruff's appeal decision was sent 11 rather than 10 days after his hearing, the Board cannot disregard the time—limit provisions of Rules 23 and 24 of the Agreement. On this point the Board is given no margin for the exercise of discretion and judgment. Said Rules specify 10 days; they are part of the Agreement; and their plain meaning and intent must be scrupulously adhered to.

Were it not for the undeniable procedural defect just noted, the instant claim would have to be denied. As it is, the Claim must be sustained. But not in its entirety. Except for said defect, Claimant was properly found guilty of proper charges at proper hearings. He shall be promptly reinstated with seniority and all other rights unimpaired, but without compensation for any time or wages lost.

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 Rules 23 and 24 of the Agreement were violated to extent set forth above in the Opinion.

AWARD

Claim sustained as set forth in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 1st day of May, 1959.