

Award No. 8821

Docket No. CL-10101

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**

THE NORTHERN PACIFIC TERMINAL COMPANY OF OREGON

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

(1) The Carrier violated the Clerks' Agreement when it dismissed W. C. Taylor from the service on charges that were unproven.

(2) The Carrier's action was arbitrary, harsh and an abuse of discretion.

(3) W. C. Taylor shall be restored to service with all rights unimpaired and compensated for all wage loss sustained retroactive to May 2, 1957.

OPINION OF BOARD: Claimant, regularly assigned as Car Checker in Carrier's Depot Yard Office, was also used (on overtime basis) as a Boardman on April 3 and 8, 1957, and as Assistant General Yardmaster Clerk on April 13, 1957. It is in connection with his work on the extra board that Carrier, on April 19, 1957, notified him in writing to appear for a hearing on six specific charges of misconduct. The investigation having been held as scheduled, Carrier wrote Claimant on May 1, 1957, that he was dismissed from service. This decision was appealed on up to the highest officer designated by Carrier to handle such matters, final declination having been given on June 19, 1957. The Employees on November 20, 1957, notified this Division of intent to file an ex parte submission on said final decision, and said submission was received here on January 3, 1958.

The Employees allege no important procedural defects in the handling of this case. Their contentions are to the effect that the evidence adduced at Carrier's investigation failed to support the charges against Claimant. Accordingly, among the matters raised in Board Award No. 8431 the Board's attention here is confined to (1) whether the evidence in fact did support the charges and (2) if so, whether the degree of discipline imposed was reasonably related to the seriousness of the proven offenses and to the past

record of Claimant as an employe, as developed in the handling of his case on the property.

As to the first issue, the Board, resisting the temptation to make this Opinion as long as the record of the case, finds as follows:

(1) Substantial evidence adduced at Carrier's investigation support Charges 1 and 3, that Claimant improperly ran around extra employe Skalbeck and doubled regular employes Barncord and Bicknell in filling machine-operation vacancies on position 503 on April 3 and 8, 1957. Claimant's own statements at the investigation, to the effect that green extra employes should not be permitted to perform the work that seasoned railroader clerks could do better, warrant the conclusion that he lacked respect for Carrier's managerial decisions and presumed to substitute his own judgment for that of Carrier's supervisors. The evidence shows that Claimant failed to consult or consider information available to him on whether Skalbeck was qualified to do the work of position 503.

(2) Substantial evidence also supports the first and more important part of Charge 2. After Claimant permitted employe Krieger to lay off from position 504, believing that extra employe Semon was a qualified weigh-master, Claimant was led to believe by fellow employes that Semon was not qualified. He failed to check with Carrier's records and supervisors on the matter of Semon's qualifications, then failed to get in touch with employe Krieger and require him to work, again doubling a regular employe.

(3) Claimant admitted the validity of Charge 4. He failed to read and reply with reasonable promptness to a letter from Assistant-to-Manager Blackburn requesting explanation of his above-mentioned behavior as Boardman.

(4) Substantial evidence supports Charge 5, that, when Claimant handled the Extra Board during a short temporary absence of Boardman Adkisson on the evening trick, he failed to follow a Memorandum of Understanding which, contrary to previous practice, now authorized the use of extra men missing call on a given shift on subsequent shifts before the lapse of 24 hours from the missed-call shift. Under the new Understanding two extra men were available. Yet Claimant doubled regular employe Mayfield until his action was reversed by Adkisson after the latter's return.

(5) Claimant denied Charge 6, and Adkisson's testimony failed to shake said denial, that Claimant berated him for "working for the Company's interest".

The Board is compelled to conclude that the record of the investigation supported five of the six charges against Claimant. The second question asked above must therefore be answered. Was Carrier's dismissal of Claimant so harsh as to constitute an abuse of managerial discretion?

The Board finds not. On the contrary, the Board rules that the penalty was not unreasonably related to the nature of the proven offenses and to the attitude of Claimant that could properly be inferred from his behavior and words. Nor was the penalty unreasonably related to Claimant's past record. Twenty "marks" against Claimant's record were cited by Carrier on the

property. Of these, four involved formal hearings and resulted respectively, in one reprimand, one record suspension of ten days, and two record suspensions of 20 days.

In the light of all the above, the Board rules that the instant claims cannot be sustained. Carrier did not abuse its discretion.

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 Carrier did not violate the Agreement or abuse its discretion.

AWARD

Claims (1), (2) and (3) denied.

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.