

Award No. 8822

Docket No. CL-10117

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**

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when, at Charlottesville, Virginia, effective June 14, 1957, it discharged Clerk, Mr. R. L. Murray from its service.

(b) Mr. R. L. Murray shall now be restored to Carrier's service with seniority and all other rights unimpaired and compensated in accordance with Rule 56.

OPINION OF BOARD: Claimant, having had 34½ years service with Carrier (including 26 years as Ticket Clerk at Charlottesville, Virginia), was discharged from said position at said location by Carrier's Superintendent Moore on June 14, 1957, on the grounds that during the period June 3, 1957, through June 6, 1957, he had violated Carrier's Rules K and 703 and had performed his duties unsatisfactorily.

During said period Claimant had been temporarily filling the vacant position of Ticket Agent in addition to doing his regular work. The unsatisfactory service that Carrier found, however, was in connection with his regular Ticket Clerk duties. The information on which Moore's decision was based was mainly provided by special investigators of Carrier, who during the above-mentioned period acted as regular patrons buying tickets and/or seeking information.

On receiving the notice of dismissal, Claimant on June 15, 1957, asked for a formal investigation, pursuant to the provisions of Rule 40 of the Agreement. The investigation was held on June 20, 1957; and five days later Superintendent Moore wrote Claimant re-affirming his dismissal but eliminating Carrier's Rule K from the three original grounds for said discipline. Successive appeals on up to Carrier's highest official designated for such matters were denied, final written declination having been made on September 27, 1957. On November 25, 1957, the Employees notified this

Division of intention to file an ex parte submission, and same was received here on December 30, 1957.

In support of their position that Claim should be sustained, the Employees and their representative have advanced the following contentions: (1) The evidence on which Carrier's decision was based was biased. The satisfactory service Claimant gave to bona fide patrons during the period June 3-6, 1957, was disregarded, as was his satisfactory performance during his 26 previous years in the Ticket Clerk position at Charlottesville. (2) Some "higher-up" must have passed down the word to "liquidate" Claimant. The evidence obtained by the secret operators was "trumped up and flimsy". (3) Claimant's performance was not checked under normal conditions. During the four day period mentioned above, he was alone and overworked, in fact filled two positions. (4) The decision to dismiss was made and, after the hearing, upheld by Superintendent Moore, who failed to attend said hearing. How could Moore weigh the evidence fairly and, under Rule 40(a), properly decide that just cause for discharge existed, when he was not present to observe the behavior and demeanor of witnesses? (5) At the hearing Claimant testified that Trainmaster Brown had never discussed with him the meaning and application of Rules K and 703. These rules were unknown to him. (6) Even if Claimant had understood said Rules and even if the evidence at the hearing established that Claimant had violated same and performed unsatisfactory service during the period in question, Carrier's decision of dismissal was arbitrary, unfair, and capricious. The proper decision under the Rules of the Agreement, especially Rule 19, would have been to demote Claimant as unqualified for the position of Ticket Agent and/or Ticket Clerk.

In the light of the principles set forth in Awards 8431 and 8503 and with due regard to the Employees' contentions summarized above, the Board finds and rules as follows: (1) Carrier's Rule 703, in its mention of efficient performance and observance of instructions by employees, is applicable to the instant case and is reasonably related to the orderly and efficient operation of Carrier's business. (2) The record is not clear on whether the provisions of this particular Rule and other specific instructions were made known to Claimant. He denied having been instructed thereon by Trainmaster Brown; yet near the close of the hearing Claimant stated that "division and superior officer" instructed him as to "what my duties were". It seems reasonable to conclude that Claimant knew not only that he was to be courteous to patrons but also that he was to be accurate in the matter of train fares and time-table information. (3) The record establishes that the time limit provisions of Rule 40(a) were complied with. (4) Claimant had representation at the hearing. (5) In view of the testimony presented by Carrier's seven witnesses at the investigation, the absence of Superintendent Moore thereat cannot be said to have prejudiced Claimant's rights or Carrier's decision. (6) The Employees have failed to provide any evidence in support of their contention that some Carrier "higher-up" was out to "liquidate" Claimant. (7) Because there was no compelling procedural errors involved in the conduct of the investigation or in the chain of decision-making, the critical question in the instant case is whether, as required by Rule 40(a) of the Agreement, Carrier had proper "cause" to dismiss Claimant from service. Was the evidence of record brought out at the hearing substantial enough to justify the supreme penalty of discharge, with due regard for Claimant's past record? The evidence establishes that Claimant supplied wrong train schedule information and made small overcharges for tickets to persons who he thought were bona fide patrons; and he once suggested transport on a competing line. These mistakes were made over

a four day period. The record contains no suggestion that Claimant pocketed the amounts of his overcharges. Nor does the record show anything similar during Claimant's preceding 26 years as Ticket Clerk at Charlottesville. Perhaps such mistakes existed then, perhaps not; speculation thereon is not permissible. There is no evidence that the special investigators, to whose use for such purposes in other cases this Board has not objected, did anything to entrap Claimant into making said mistakes. Faced with the evidence and with Claimant's length of service, this Board's decision on a proper penalty might well have differed substantially from Carrier's. But the record contains nothing persuasive on which the Board might reasonably ground a ruling that Carrier's own decision to dismiss was so arbitrary and ill-founded as to constitute an abuse of discretion. The mistakes made by Claimant, if repeated and widespread, might have serious consequences for Carrier's business. Under such circumstances the extreme penalty might be said to be justified as an example to other employees. In short, the Board finds no compelling warrant to alter Carrier's decision to one of, say, suspension or demotion.

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's decision was not improper or violative of the Agreement.

AWARD

Claims (a) and (b) 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.