

Award No. 8888

Docket No. CL-10181

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, 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 Montgomery, Alabama, on December 1, 1956, in the treatment accorded Clerk T. J. Keeney by dismissing him from service as a result of an investigation conducted at Montgomery, Alabama, on November 9, 1956.

(b) Employee T. J. Keeney shall be restored to service with all rights and privileges unimpaired.

(c) He be compensated for wage loss sustained on December 1, 1956, and subsequent thereto until restored to service.

OPINION OF THE BOARD: The employe herein named was discharged from the service of Carrier, after reporting sick, on November 2, 1956. The same evening the employe was observed by Inspector of Police Smyth for Carrier, and General Yardmaster Pritchett, acting as an official during a football game at LaFayette, some sixty miles from Montgomery, where the employe resided and held a Clerk's assignment from Carrier. Following investigation and hearing the employe was discharged from service for his failure to protect his assignment.

While there is some contention in the record before us that the employe was receiving compensation for his outside work, such is not supported by proper and conclusive evidence. However, we are of the opinion, after a review of the entire record before us, that the employe was given a fair and impartial investigation and hearing. That the charge of failure to protect

his assignment by laying off work, and reporting sick, certainly is amply supported by the record here, and there is nothing to support the allegation that Carrier acted in an arbitrary or capricious manner in making its decision. The medical report furnished by the employe dated November 8, 1956, does not show a disabling condition present, nor do we believe the doctor by suggesting exercise had in mind for him to officiate at a football game, sixty miles from his home, and which requires a great amount of physical exercise and produces a nervous tension on his part.

The employe was tried by Carrier, properly, under the applicable rules of the Agreement. This being so, the Board has no authority to set aside the fair and reasonable judgment of Carrier.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 Claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1959.