

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**

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when, at Atlanta, Georgia, it discharged Claimant, Mr. Curtis Thompson, from its service effective July 12, 1957.

(b) Claimant, Mr. Curtis Thompson, shall now be restored to Carrier's service with seniority and all other rights unimpaired and compensated in accordance with Rule 46 (a).

OPINION OF BOARD: It appears from the record before us, that the employe, following his arrest by authorities on the property of Carrier, was discharged from service of Carrier, the same date July 12, 1957.

The record discloses that the employe was involved in divorce proceedings, and on two previous occasions had been arrested, evidently for failure to pay alimony or support money. On January 29, 1957, he had been discharged by Carrier and was reinstated on a leniency basis as of April 1, 1957. Concerning his last arrest, the record discloses he had in no way committed any violation of the law, and was dismissed from custody without charge.

Carrier charged the employe with failure to protect his assignment on July 12, when he was placed under arrest, and also with conduct unbecoming an employe. With such charges, he was summarily discharged. While it is true, as alleged by Carrier, he was arrested on its property while engaged in his assigned position. The fact that he was summarily dismissed from service, appears to the Board, that the Superintendent of Buildings, for Carrier, having his own opinion as to the employe's guilt, discharged him. This was an arbitrary position, without first verifying the reasons for the arrest, as it later was determined the charges filed in court were without support and the case was dismissed and he was released from custody. Carrier

jumped the gun in discharging the employe without provocation. No damage resulted to Carrier as a result of the improper arrest.

The employe while he was under arrest, was not in a position to protect his assignment, but such certainly was not due to any action prompted by the employe. It is common knowledge that many times people are taken into custody for investigation, and while the charges may be without merit, some embarrassment may be caused innocent parties. Such is the situation here.

The employe was arrested while on his assignment, Carrier discharged him, and investigated and learned the true facts later. The criminal case was dismissed without charge. We are of the opinion the claim here should be sustained, that Carrier through its Building Superintendent acted in an arbitrary and capricious manner in reaching its decision, without making a cursory investigation of the truth or falsity of the criminal charges made against the employe, before he was discharged from service.

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 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 claim should be sustained as per Opinion.

AWARD

Claim sustained.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 8890

Docket No. CL-10321

NAME OF ORGANIZATION: Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: Southern Railway Company.

Upon application of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Organization herein, has requested an interpretation of the award made in this case, relative to a period between January 10 and April 10, 1959, when the claimant herein was confined to the Georgia State Penitentiary.

For this period of seventy days, the Organization contends that under the award here, the claimant should be compensated for such days by the Carrier.

From the information and record before us here, the Board holds that the award herein is clear and concise. That the information furnished us in support of their request for interpretation, is based upon new evidence and was not furnished the Board when the Award was made.

In any event, if the facts are true that claimant was serving time in a penitentiary, he could in no sense be considered as available for service in his position with the Carrier, nor could Carrier be required by this Board to compensate the claimant as requested here.

The request of the Organization is without merit.

Referee Donald F. McMahon who sat with the Division, as a member, when Award No. 8890 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1960