

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William E. Grady, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

1. Employee J. E. Dieringer was improperly withheld from service following investigation held on June 20, 1955 in connection with his alleged failure to protect his assignment as Train Clerk-Teletype Operator at Milwaukee, Wisconsin on the night of June 16, 1955.

2. Employee J. E. Dieringer shall be paid a days pay at the rate of pay of Position No. 82 which position he occupied when he was removed from service, for each day he was held out of service from June 20th to September 12, 1955.

OPINION OF BOARD: This is a discipline case. J. E. Dieringer, herein called "Claimant", was discharged on June 20, 1955 on a finding that he had failed to protect his assignment on June 16, 1955. Claimant was reinstated on September 12, 1955. The Organization asserts that Claimant should not have been penalized and should be compensated for time lost from June 20 to September 12.

Claimant had been on furlough. On May 17, he was called to fill a temporary relief assignment while the incumbent of the job was ill. After several days, when it had become apparent that the incumbent would be out indefinitely, Claimant continued to report on the relief job without special summoning.

On June 8, the job of Road Caller was bulletined and Claimant was one of the successful bidders. Claimant was instructed on June 16, to start the caller job on June 18. Claimant was not then told to continue on the relief

job and he did not ask. Claimant failed to protect the relief job on June 16. Claimant reported to the caller job on June 18.

Claimant was charged on June 17. An investigation was held on June 20. Claimant appeared in person. He said that he had not protected the relief job on June 16 because he thought that the new assignment effective June 18 to the caller job, ended his assignment to the relief job; that it was simply a misunderstanding and that he would have been glad to have worked on June 16. Claimant was discharged on June 20.

At the request of the Organization, a further hearing was held on July 11. The hearing was at some length and various witnesses were called. Claimant's position remained the same. On July 12 the Carrier adhered to its decision to discharge Claimant.

On July 19, the Organization appealed, asking reinstatement and pay for time lost. On September 2, the Carrier reaffirmed its decision but added that it would reinstate Claimant as a matter of leniency, effective September 12, without back pay.

The Organization advised the Carrier that reinstatement alone was not enough and that the pay claim would be pressed. The instant claim was filed.

It is argued that the claim has been extinguished because Claimant returned to work on a leniency basis. There is nothing to indicate, however, that reinstatement was sought or accepted on that basis. The pay claim, moreover, was reserved.

The question presented therefore, is whether the penalty of suspension for almost three months, shall be disturbed.

The bulletining of the caller job, on which Claimant was one of the successful bidders, involved a cluster of job changes and moves by employees. Primary responsibility for direction of the affected employees rested upon the Carrier. The Carrier was explicit about the start of the new assignments but less so about termination of the old.

That, however, did not leave Claimant without responsibility. True, Claimant was a comparatively new employee, but it is unnecessary to discuss his responsibilities in general terms. Claimant knew that the man he was relieving was still ill. In view of that fact, Claimant should have asked whether he was to stay on the relief job until he started the caller job. This would not have placed any undue burden upon Claimant and the answer was readily ascertainable.

Keeping in mind that we now deal, not with discharge, but rather with suspension, the penalty survives the applicable tests.

Accordingly, the claim will be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1960.