

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Railroad Company that:

- a. The Carrier violated Rule 60 of the current agreement when it failed and/or refused to grant Assistant Signalman J. L. Dale a fair and impartial hearing within the prescribed time limit as provided therein.
- b. The Carrier now clear the claimant's personal record and that he be reinstated in Carrier's service with compensation for wages lost since May 26, 1959, and with seniority and vacation rights unimpaired account Carrier's dismissal of claimant in violation of effective agreement.

OPINION OF BOARD: Claimant J. L. Dale was dismissed from service for violation of Carrier's General Rule O-2. The violation, which Claimant admitted, occurred under the following general circumstances. Claimant had been assigned to an Assistant Signalman position to work with the Foreman of Maintainers, T. H. Fahey. On April 17, 1959, the latter ordered Claimant to handle storage batteries; Claimant contended that the batteries were too heavy for one man to handle and an argument resulted. Claimant admits that in the course of the argument he used improper language toward Mr. Fahey and that he also pushed him, disarranging his shirt and tie.

While not denying his actions, Claimant explained to the Carrier that they occurred "Because he [Fahey] has been after me all the time I have been on Foreman Fahey's territory and I lost my head and blew up." (When asked whether he "ever blew up in this manner before", Claimant answered, "Not to my recollection.") A similar charge of provocation was made at the hearing, in the presence of Mr. Fahey—at no time did the latter make any effort to deny this charge, nor did the Carrier, insofar as the Record indicates, make any attempt at any time to refute Claimant's charge of provocation by an identified individual, Mr. Fahey, nor did the Carrier make any effort, insofar as the Record indicates, to inquire into the truth of the charge of provocation.

Accordingly, some element of truth must be credited to Claimant's assertion of provocation. This mitigating factor is accompanied by other considerations in Claimant's behalf. As to the weight of the batteries, nowhere in the Record did the Carrier challenge Claimant's assertion that they were too heavy for one man to handle. In this regard, the Organization calls attention to the following statement contained in the Carrier's Book of Operating Rules:

"The Company does not wish or expect its employees to incur any risks whatever from which by exercise of their own judgment, and by personal care they can protect themselves, but enjoin them in all cases to do their duty in safety, whether they may at the time be acting under orders of their superiors or otherwise."

Another consideration in Claimant's behalf is the fact that at the time of his dismissal he had about nine years of service with the Carrier, and insofar as the Record indicates there were no unfavorable marks on his official service record.

A review of the Record in this case leads to the conclusion that a rather severe penalty was in order since the guilt of Claimant to a serious offense was established, by his own admission, but the review also leads to the conclusion that the penalty of dismissal from the service was too severe. In view of the facts and circumstances disclosed by the Record, the time which Claimant has lost from the service of the Carrier constitutes a sufficiently severe penalty. Therefore, Claimant shall be reinstated with seniority and vacation rights unimpaired, but without pay for time lost. See Third Division Award 6642.

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

That the parties waived oral hearing;

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 Carrier's assessment of discipline was too severe.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July, 1960.