

Award No. 10930

Docket No. CL-13241

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Colnick, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, (GL-5153), that:

1. The Carrier violated the Clerks' Agreement when it arbitrarily and capriciously dismissed employe L. F. Lohmeier from the service of the Carrier on October 17, 1961.
2. Carrier shall be required to reinstate employe Lohmeier to the service of the Carrier with seniority and all other rights unimpaired, and.
3. Carrier shall be required to compensate employe Lohmeier for all wage loss sustained as a result of his dismissal from October 16, 1961, the first day held out of service and each work day thereafter to the date he is restored to service.

OPINION OF BOARD: Claimant was employed as a freight handler at the Carrier's freight house in Lincoln, Nebraska, from September, 1945 until October 17, 1961, when he was discharged for "violation of Rule 'D' of the Burlington Lines Code of Safety Rules, by failure to inform the foreman that Burlington Lines trailer #6992 was being improperly loaded when assisting with the loading thereof, . . . and instead notifying Civil Police authorities, causing the driver of the vehicle to be arrested on a charge of the trailer being overloaded."

On September 29, 1961 the Claimant was loading a 40 foot Volume Van trailer at the Carrier's dock. The trailer contained several products including piping. In order to properly load the piping it was necessary to shift other products in the trailer. This latter shifting of the load was done about 5:00 P. M. The Lincoln Freight House crew, including the Claimant quit at 6:30 P. M.

Some time after Claimant arrived home he called the Nebraska Safety Patrol and told them that he thought the Burlington Lines trailer #6992 was overloaded. He described the trailer to the police officer, told him when it was expected to leave Carrier's dock, and the route the driver was expected

to take. As a result of this information, the truck was stopped by the Nebraska Safety Patrol, the driver was arrested and had to post bond. Later the truck driver pleaded guilty to the complaint of overweight and he was fined \$200.00 and costs which were paid by the Carrier.

The Claimant and other employees of the Carrier were interviewed. On October 9, 1961, Claimant gave the following signed statement to a representative of the Carrier.

"I am a freight trucker at the Lincoln Freight House, my assigned hours are 9:30 A. M. until 6:30 P. M., Monday through Friday. I live at 2126 Sewall Street, Lincoln, Nebraska. I have been with the CB&Q Railroad since 1945.

"On date of September 29, 1961, I was loading pipe into B T trailer #6992, the pipe was about 20 feet long and I advised B T dispatcher Charles Steyer that the pipe was too long to get it in the truck. He instructed me to take out enough cases of Zerex from the truck to make room for the pipe. I removed 16 cases of Zerex, got the pipe in the trailer, then reloaded the Zerex into the trailer. I had remarked to Mr. Steyer before removing the Zerex that he was getting a lot of weight in the truck.

"On arriving at my home after 6:30 P. M., the evening of September 29, I called the Nebraska Safety Patrol and told them that I thought B T trailer #6992 running between Lincoln and Grand Island was overloaded, that the trailer would be leaving Lincoln between 6:30 P. M. and 7:00 P. M. The Safety Patrol Officer asked me how I knew the trailer was overloaded and I told him I knew because I helped load it.

"The reason I called the Highway Patrol was because I did not like the way the B T Dispatcher Charley Steyer was instructing me as to how to load the pipe and insisting that it be loaded in a certain manner, when I don't think he knows anything about loading or stowing a truck."

An investigation of the discharge was held on October 23, 1961. Claimant and a representative of the Organization were present. Claimant testified substantially in accordance with his written statement. He admitted giving the written statement above quoted, but denied that he had deliberately tried "to get the CB&Q Railroad and the BTL Company involved in an unlawful act." When he was asked why he called the Nebraska Safety Patrol he replied: "As a Citizen of the State of Nebraska." When he was further asked if he could have accomplished his purpose as a Citizen of Nebraska by first reporting the overload to his superiors, he replied: "I do not know." He was pressed for an answer to the reason for his motive in his act. Some of the questions and answers were:

"Q—Mr. Lohmeier, did you ever consider passing this information of the overloaded trailer on to CB&Q officers or foreman?

A—No sir.

Q—Why did you not first give the CB&Q officers or dock foreman the information advising them of the overloaded trailer?

A—I do not know."

* * * * *

Q—Were you faithful when you gave information to outsiders when you could just as easily given it to your foreman?

A—Yes sir.

Q—Who was your immediate superior officer?

A—Mr. Henry Gerdes.

Q—Could you not been just as law abiding by giving the information to Mr. Gerdes who would have handled it as a railroad problem?

A—I do not know.

Q—If you were so law abiding why did you not give this information to our Chief Special Agent at Lincoln?

A—I do not know.

Q—Were there any ill feelings that caused you to take the action with Civil authorities that you did, rather than to handle it with the railroad personnel?

A—No."

It is difficult to understand Claimant's motive for his act. In his signed statement he said that he did not like the way his supervisor had been instructing him how to load the pipe and that this supervisor did not know "anything about loading or stowing a truck." Yet at the hearing he said that he had no ill feelings.

Every employe owes a loyalty to his employer. If an employer commits a wrong or violates a law and the employe is either aware of it or suspects it, he owes it to his employer to report it to him. Reporting first to civil or criminal authorities is a blatant violation of this implied loyalty. It justifies the employer to take disciplinary action Awards 9422 (Bernstein) 8711 (Weston) 2496 (Carter) 4855 (Carter) and others. In Award 2496 this Board said:

"... we desire to point out that a Carrier has the right to expect absolute loyalty and full cooperation from its employes, otherwise the interests of the Carrier are jeopardized and the public interest is not subserved. An employe who fails to fulfill his fundamental obligations to his employer subjects himself to disciplinary action."

This principle has been followed by other Divisions of the Board.

Claimant had sixteen years of service with the Carrier prior to his discharge. There is nothing in the record to show that he was ever previously disciplined. We must assume that prior to September 29, 1961 he performed his duties satisfactorily and was in all respects a faithful employe. While this is not a defense to his discharge, it has some bearing on a showing to mitigate the severity of the penalty imposed. The Organization has argued, among other things, that the disciplinary action was arbitrary and capricious and that the discharge penalty was too severe.

The Awards cited by the Organization to support its position are, for the most part, not relevant. In Awards 8432 (Daugherty), 8088 (Lynch), 4295 (Rader) 6827 (Messmore), 6275 (Smith), 6295 (Smith), 6087 (Whiting), 6056 (Begley), 5980 (Messmore), 6116 (Messmore), 5543 (Carter) and others which the Organization presented as valid precedents, this Board reinstated the employe either because the evidence was insufficient to support the penalty, or that the employe did not violate any Rule, or because of procedural defects. These elements do not exist in this case. The evidence is virtually undisputed. It overwhelmingly supports the charge. The Claimant did violate Safety Rule D, but more important he also deliberately disregarded the implied loyalty which he owed to the Carrier. There are also no procedural defects in this case. The Claimant was given a full and complete hearing, he was represented by an official of the Organization, and he was not deprived of any procedural or evidenciary rights.

It is true that this Board has, in some instances, reinstated employes where the penalty of discharge was too severe and when the equities of the situation justified a modification of the penalty. Awards 3066 (Youngdahl), 3358 (Tipton), 10696 (Levinson), 10697 (Levinson), 8195 (Wolff), and 10790 (Ray). But these Awards can be distinguished from the case at hand.

In Award 8195 (Wolff) the Board said:

"Now, if the claimant's misconduct has been of such a nature as to have brought discredit upon the Carrier, or if it had been harmful or detrimental to it, we would have denied the claim, regardless of whether or not a violation of Rule E was specified in the charge. However, we find that the offense was not of such a nature and our judgment in this regard is supported by the Carrier's own readiness to withdraw that portion of the charge claiming a violation of Rule E."

With the elimination of the charge of violating Rule E "all that remained was the charge of disorderly conduct, causing a disturbance and refusing to leave the premises."

In Award 10790 (Ray) the penalty of discharge was held arbitrary and excessive because all that the Carrier could establish was the "failure of the Claimant to tag one bag. This could well have been the result of a mere oversight by Claimant in the rush of handling bags from two trains at about the same time."

The offense of Claimant, Lohmeier is serious. By calling the Nebraska Safety Patrol he has "brought discredit upon the Carrier." He completely disregarded his loyalty as an employe. The mere fact that he had sixteen years of service is, in itself, not sufficient grounds to ignore his serious offense and to entitle him to reinstatement. His reinstatement would not serve a useful purpose in establishing good employe-employer relations. It may even be detrimental to do so because other employes of the Carrier who may commit serious offenses of disloyalty would claim equal consideration. This would not be conducive to the continuing good relations between the Carrier and the Organization. The Board cannot permit its emotional desires to substitute for the judgment of the Carrier.

For the reasons herein stated we hold that the claim is without merit.

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 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 the Agreement was not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1962.