

Award No. 11327

Docket No. CL-13578

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5247) that:

1. The Carrier violated the Clerks' Agreement, except as amended and supplemented, when on November 7, 1961, it arbitrarily held Mr. James E. Kidd, Trucker-Cleaner, out of service, and also when on November 16, 1961 it summarily dismissed Trucker-Cleaner Kidd from the service following investigation.

2. Trucker-Cleaner James E. Kidd shall now be restored to the position of Trucker-Cleaner, Roanoke, Virginia Passenger Station, with all rights unimpaired and shall be compensated for all wage loss sustained, the loss of any other benefits and all expenses incurred as a result of his being arbitrarily held out of service and summarily dismissed, beginning November 7, 1961 and continuing until such time that he is restored to the service of the Carrier.

3. Trucker-Cleaner James E. Kidd's record shall be cleared of all alleged charges or allegations which may have been recorded thereon as a result of the alleged violation named therein.

OPINION OF BOARD: This is a discipline case. Claimant was employed by the Carrier as Trucker-Cleaner at Roanoke, Virginia, Passenger Station. On November 5, 1961, at about 11:20 A. M., an altercation developed between the Claimant and another Trucker-Cleaner while they were engaged in loading mail onto a passenger train. Both employes were notified by letter dated November 6, 1961, to report on November 8, 1961, for formal investigation on the following charge:

"To determine responsibility in connection with your unbecoming conduct while on duty at Roanoke Passenger Station at approximately 11:20 A. M., November 5, 1961."

Formal investigation was held as scheduled, at which the Claimant was represented by two representatives of the Organization. Following the investigation the Claimant was notified on November 16, 1961, that he was dismissed from the service.

The submission of the Organization to this Board is based primarily upon what it considers to be technical violations of the Agreement.

The Board, upon consideration of the entire record, finds that the Claimant's substantive rights under the Agreement were not prejudiced in any way by the charge made against him or by the notice given him of his dismissal from the service.

There is likewise no proper basis for the contention of the Organization that the highest officer of the Carrier designated to handle disputes failed to render his decision on appeal within the time specified in Rule 27 (f). By the very language of the rule, the thirty-day time limit for decisions is not applicable after appeal to the highest officer.

The evidence in the case clearly indicates that the Claimant was the aggressor in the altercation that transpired on November 5, 1961, and, finding no prejudicial error adversely affecting the Claimant's substantive rights under the Agreement, the claim will be denied.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1963.