Award No. 11999
Docket No. TE-13817

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (Coast Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that:

1. The Agreement between the parties was violated when L. P. Fox was unjustly dismissed from service as a result of an investigation conducted June 5, 1961.

2. Carrier shall now restore L. P. Fox to service with seniority rights unimpaired and compensate him for salary lost, retroactive to and including July 5, 1961.

OPINION OF BOARD: Claimant was removed from service on July 4, 1961 after a formal investigation which was held on June 5, 1961. He was charged with violating Operating Department Rules 752(A) and 755 which read:

"752(A). Employes must not be careless of the safety of themselves or others, indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious. They must conduct themselves in a manner that will not bring discredit on their fellow employes or subject the railroad to criticism and loss of good will."

* * *

"755. Employes must not give power of attorney or assignment covering their wages, nor accept an assignment or power of attorney from other employes for the collection of their wages.

They must not authorize deductions from their wages without approval of the Company; refuse to pay their just debts, or subject their wages to garnishments."

Specifically, it was charged that writs of attachment against Claimant's wages were served on Carrier on December 15, 1960, March 8, 1961, March 22, 1961 and May 24, 1961.

In the record, Petitioner contended that (1) that the notice of discipline was not timely, (2) that a conference as required under the Railway Labor Act was not held, and (3) that the charge against Claimant had not been proved so that the dismissal was unjustified and, in any event, improper.

There is no reason to dwell at length on contentions 1 and 2. Claimant was informed of his discipline on July 5, 1961, the thirtieth day after the date of the formal investigation as required under Section 3 of Article V of the Agreement. The record shows that a conference of this claim was held on three successive days at the top level of handling.

Claimant readily admitted that the four wage attachments or garnishments were served on the Carrier on the dates above mentioned. He stated, however, that he had a release of the attachment served on May 24, 1961. He said:

> "The release was granted by Household Finance Company, which in turn releases my check and the service of the attachment and releases my check in its entirety back to me and awarding to the Municipal Court, completely nullifies any service of attachment."

The record of the investigation shows that Claimant individually did not contract the debts which later resulted in the garnishments. They were contracted by Claimant's wife who was living separate and apart from him. He had no knowledge of the debts she incurred. In the separation agreement Claimant agreed to support his children, pay alimony to his wife and pay a fee to his wife's attorney in monthly installments. His wife advised him not to make the payments to the attorney and told him that she would assume this obligation. Claimant, accordingly, made no payments to her attorney. The first garnishment served on the Carrier on December 15, 1960 was on the debt due the attorney. He explained his position to the attorney and arranged to pay this obligation in monthly installments. The garnishment was released.

The three other attachments were for debts incurred by his estranged wife without his knowledge. At the time of their separation Claimant's wife appropriated approximately $600.00 in checking and savings accounts and cashed about $400.00 in savings bonds. In addition, she incurred many obligations, including those involved in the garnishments, which Claimant was obliged to assume although he had no knowledge of them. At the hearing, he stated he had consulted an attorney, that he had coordinated his financial responsibilities, and "that there will be no recurrences of these or any other attachments, nor any other unpleasantries as these which were brought about."

It is questionable whether the four garnishments brought discredit to the Carrier. Carrier did nothing to condone an evasion of Claimant's obligation. On the contrary, it honored the attachments when served. As a practical matter, creditors generally prefer that the employe debtor retain his job so that the prospects for collecting the debt may remain good. Garnishments are not only a nuisance to employers but they are also an expense. There is additional clerical work entailed and frequently legal expense incurred in the proceedings. Excessive garnishments cannot be condoned. We can, however, find nothing in the record showing a violation of Operating Department Rule 752(A).

Operating Rule 755 provides that an employe may not subject his wages to garnishment. Carrier states that it has been a practice to remove an employe from service who has had more than three garnishments within a twelve month period. This is not an unreasonable rule of practice. But it is not one which is applied rigidly in every situation irrespective of the reason for the debt and for the garnishments. The debts sought to be collected must be legitimate, the circumstances revolving around the obligations should be considered, and there should be no element of persecution in the incurring of the debts.

It is a well established principle that we will not disturb a disciplinary penalty unless due process has been violated, or when the discipline imposed is discriminating, or out of proportion to the offense. Carrier has invoked the extreme penalty for an offense which in this case may be comparable to a criminal misdemeanor. While we do not absolve Claimant of his legal obligation to pay his debts, nor of his duty to avoid excessive garnishments, we do believe that Carrier was arbitrary and unreasonable in assessing the extreme penalty of dismissal from service. In view of all the facts in the record, a suspension of sixty (60) days would have been the maximum penalty justified. Claimant should be restored to service with all rights unimpaired. Claim for monetary loss from September 5, 1961, is sustained, but Carrier shall have the right to deduct all sums earned by Claimant in other employment since September 5, 1961.

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 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 the penalty of dismissal from service was too severe.

AWARD

Claim is sustained to the extent and on the basis indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1963.