

**Award No. 12002**  
**Docket No. CL-14027**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**David Dolnick, Referee**

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**PARTIES TO DISPUTE:**

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

**THE NEW YORK CENTRAL RAILROAD COMPANY  
(Grand Central Terminal)**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5297) that:

1. Carrier violated the Clerks' Agreement when it improperly and unjustly dismissed Eric D. Thompson, Assistant Foreman, Grand Central Terminal Baggage Department, from the service of the Carrier for alleged violation of Rule 725, and failed to notify him of its decision within the time limits prescribed in Rule 22 of the Agreement.
2. Eric D. Thompson shall now be restored to the service of the Carrier with seniority and all other rights unimpaired and his record cleared.
3. Carrier be required to reimburse Eric D. Thompson for all time lost since January 10, 1962 as a result of the violation of the Agreement.

**OPINION OF BOARD:** On January 23, 1962, Claimant was dismissed from service because he violated Rule 725 governing the Baggage Department. He was absent from his work assignment without excuse from 10:00 P. M. to 10:55 P. M. on January 10, 1962. An investigation and hearing on the charge was held on January 17, 1962.

Petitioner processed and handled this claim on the property, in every step up to the filing of the claim with the Board, solely on the premise that Carrier violated the procedures provided in Rule 22, particularly paragraph (b) thereof. At no time, on the property, did Petitioner request that Claimant be reinstated with full compensation because the facts did not justify the penalty. This was done for the first time when Petitioner filed the claim with the Board.

The handling of this claim on the property and the filing of the claim with the Board is, in every respect, similar to the handling of the claim on the property and the filing of the claim with the Board in Award 12001. We held there

and reaffirm here that the claim before the Board is not the same as the one handled on the property and we may not rule on the merits of the dismissal from service. Petitioner did not comply with Section 3, First (i) of the Railway Labor Act, as amended.

Here, too, Petitioner made an oral plea for leniency on the property. We reaffirm our ruling that such a plea is a prerogative of the Carrier and we may not here review it.

It is indeed unfortunate that the merits of the claim for an employe with nineteen years of service is not before us for consideration. However we may feel about the justification for the extreme penalty of dismissal, we can only assume that Claimant and the Petitioner confessed guilt when they failed to raise that issue on the property. We may not here review such an implied confession of guilty no matter what equitable considerations are now urged.

Petitioner's arguments that Carrier violated Rule 22 are identical with those made in Award 12001. The facts and circumstances relating to the hearing, the rendering of the decision and to the signing of the decision are also identical. In many stages, the two claims were handled together on the property. We need not again repeat our findings in detail. Carrier did not violate Rule 22.

**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 Carrier did not violate the Agreement.

#### AWARD

Claim is denied.

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.