

Award No. 12898
Docket No. CL-14378

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5388) that:

(a) The Carrier violated the Agreement between the parties in the treatment accorded to Robert H. Marquardt, formerly employed as Mail Handler, and John J. Szymonski, formerly employed as Assistant Foreman in the Tractor Shop at Central Station, Chicago, Illinois, when on July 7, 1960, Carrier dismissed Messrs. Marquardt and Szymonski from the service following an investigation conducted on June 30 and July 5, 1960; and

(b) Because of Carrier's illegal action, that Robert M. Marquardt and John J. Szymonski be reinstated to the service of the Carrier, with seniority and all other employment rights fully restored, and that Messrs. Marquardt and Szymonski be fully reimbursed for all wage losses suffered by them, retroactive to June 30, 1960.

OPINION OF BOARD: Claimants, Robert H. Marquardt and John J. Szymonski, were dismissed from Carrier's service for the misappropriation of commissary supplies. Petitioner is not submitting this case to the Board on the merits of the dismissal but is submitting it on procedural grounds contending that, because of violations of the Agreement, Claimants have been denied due process.

The appeal is submitted on the following grounds:

Firstly, it is contended that the notice of investigation directed to the Claimants did not satisfy the requirements of the Agreement.

Secondly, it is contended that the manner in which the Claimants were held out of service during the investigation violated the Agreement.

Thirdly, it is contended that the issuance of notices of dismissal to the Claimants by Baggage and Mail Agent Neuman violated the Agreement.

Finally, it is contended that the Agreement was violated when Superintendent Bodell participated as a member of the Board of Inquiry as he was the next avenue of appeal after the investigation.

Carrier maintains, to the contrary, that Claimants were afforded a fair and impartial investigation, that there were no irregularities in the procedure and that Claimants were not denied the right of due process.

The pertinent portions of the Agreement with which we are concerned are:

RULE 24 INVESTIGATION — HEARING — APPEAL

"(a) Employees who have been in the service more than sixty (60) days shall not be disciplined or dismissed without investigation. They may be held out of service pending investigation, which shall ordinarily be held within ten (10) days of the date when charged with the offense or held out of service.

(b) Employees charged with an offense shall be advised in writing of the precise charge at the time the charge is made. A decision will be rendered within ten (10) days after completion of the investigation.

* * * * *

(e) In case the employee or his duly accredited representatives are not satisfied with the decision resulting from the investigation or hearing, the right of appeal by the employee or his duly accredited representatives in the regular order of succession up to and including the highest officer designated by the Carrier to whom appeals may be made is hereby established. . . ."

In considering the first point raised by the Petitioner we note that on the date of June 21, 1960, Baggage and Mail Agent Neuman addressed identically worded letters to Claimants as follows:

"Please arrange to attend a formal investigation in my office on the Mail Platform at 12:30 PM, Central Standard Time, Thursday, June 23, 1960.

"This investigation is in regards to the alleged misappropriation of commissary supplies.

"You may bring a duly accredited representative."

The record fully discloses that Claimants knew they were being investigated for the misappropriation of commissary supplies. Each of them on June 2, 1960, prior to Neuman's letter of June 21, had been interrogated by Special Agents of the Carrier about his participation in the alleged thefts and had made statements in connection with the matter. At the hearing both Claimants stated they understood they were requested to attend the investigation in connection with alleged misappropriation of commissary supplies.

Rule 24 (b) requires that "employees charged with an offense shall be advised in writing of the precise charge". The formation of a charge and the giving notice thereof need not be in the technical language of a criminal complaint. It is sufficient if it appears that one charged understood he was being investigated for the dereliction of duty set forth in the notice. There is nothing in the record to indicate Claimants were in any manner misled or prejudiced by the form of notice and charge made. The notice complies with the preciseness required by the rule. See Award 3270 — Carter.

The circumstances in this case clearly distinguished it from a recent sustaining Award. Award No. 12814 — Hall.

We come then to a consideration of the second point raised — that the manner in which Claimants were held out of service violated the Agreement. Rule 24 (a) provides that a person charged may be held out of service pending investigation. The charge against Claimants was made on June 21, 1960, the hearing was held on June 30 and then recessed until July 5. On the 30th of June, at the conclusion of the first day of the hearing, the Claimants were orally advised by Neuman, Baggage and Mail Agent, their immediate superior, that they were suspended from service pending the investigation.

There is nothing in the rule which requires such notice shall be in writing. If the Carrier had the right to hold Claimants out of service well in advance of the date of the investigation, it manifestly had the right to hold them out of service as of June 30, 1960. They surely have no complaint as they could have been held out for a longer time and this did not affect their right to due process. See Award 10409 — Begley.

It was next contended, the third point raised, that Neuman, the Baggage and Mail Agent, after the completion of the hearing, on July 7th, 1960, issued two separate letters to Claimants advising them they were dismissed from service, effective immediately. It is urged that this notice of dismissal was in violation of the Agreement as Neuman was a witness and not a member of the Board of Inquiry that conducted the investigation.

The pure fact of the matter is that the record clearly discloses that Neuman was a member of the Board of Inquiry. The stenographer who transcribed the record mistakenly listed him under "Persons Interrogated" instead of under "Board of Inquiry" where it properly should have been. The transcript itself is the best evidence of this. Consequently this claim of irregularity on the part of the Carrier is without merit.

It is Petitioner's final contention that there was a violation of the Agreement and due process denied the Claimants when Superintendent Bodell actively participated as a member of the Board of Inquiry when he was the next appeal officer of the Carrier after the hearing; that his sitting as a member of the Board of Inquiry deprived Claimants of their rights to an independent consideration and decision by the officer of the Carrier appealed to.

The Carrier has raised a question as to whether or not Claimants are estopped from raising this objection to the procedure as it was waived by a representative of one of the Claimants at the hearing. We will conclude that Claimants are not estopped.

However, the fact that the Superintendent sat on the Board of Inquiry at the hearing did not disqualify him from considering the Claim on appeal. He had no personal knowledge of the claim and did not testify at the hearing. Furthermore, after the denial of the claim on appeal by the Superintendent, there was still an appeal to be made to the highest officer designated to receive appeals by the Carrier. There was no procedural violation in this conduct. See Award 9322 — Johnson; Award No. 12811 — Hall.

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

There has been no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1964.