

Award Number 13350

Docket No. CL-13867

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

FRUIT GROWERS EXPRESS COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5303), that:

1. The Fruit Growers Express Company violated the Agreement when effective June 17, 1962 it indefinitely suspended Mr. W. F. Smith from the position of Inspector at Willard, Ohio, and denied him the right to exercise his seniority to positions at this station.
2. Inspector W. F. Smith shall now be restored to the position of Inspector, Willard, Ohio with all rights unimpaired, specifically including the right to exercise seniority to all positions at Willard, Ohio in accordance with the Agreement provisions.
3. Inspector W. F. Smith 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 suspended from service at Willard, Ohio and arbitrarily denied the right of exercise of seniority at this station, beginning June 17, 1962 and continuing until such time that he is restored to the service of the Fruit Growers Express Company at Willard, Ohio.
4. Inspector W. F. Smith'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: Claimant W. F. Smith entered the Carrier's service at Detroit on February 12, 1954. At the time the subject dispute arose he held the position of Inspector at Willard, Ohio. On May 21, 1962 the Carrier issued Claimant Smith written notice of an investigation to be held on May 25, 1962 on the charge of "insubordination". During the course of the investigation Carrier stated that the basis for the "insubordination" charge was the contention that Claimant had displayed an "uncooperative attitude" and had refused "to impart necessary and vital information requested by Mr. O'Neill on the morning of May 7, 1962". The subject Carrier (FG&E) provides refrigerator cars and related protective services for the Baltimore & Ohio Railroad at Willard and S. A. O'Neill is B&O Trainmaster at that location.

Following the investigation the Carrier gave Claimant Smith written notice of indefinite suspension from his position at Willard, effective at the conclusion of Claimant's vacation June 17, 1962. Carrier further advised that Claimant would be allowed to bid "on any vacant or new position bulletined on or after June 17, 1962 at any station in your seniority district other than Willard, Ohio". Carrier also advised that if and when Claimant is awarded a position at some other station he would be considered as under probation for one year.

A claim protesting the subject disciplinary action was duly filed and progressed to the Board. Meanwhile, in November 1962 Claimant Smith bid and was awarded the advertised position of Icing Foreman-Inspector at Cincinnati. He began working in this position on December 1, 1962.

The evidence of record does not support the insubordination charge which Carrier made against the Claimant. We therefore will sustain Parts 1, 2 and 4 of the claim. There is no sound ground for upholding Part 3 of the claim, however. On June 18, 1962 and on subsequent dates prior to the time Claimant was awarded the aforesaid position in Cincinnati, a total of eleven positions were bulletined in the seniority district at locations other than Willard, Ohio. Claimant could have bid on these other positions but he did not do so. Since he did not seek to obtain any of these available jobs, we do not think he should be compensated for the wage loss which he could have avoided. With respect to the reference in Part 3 to "loss of any other benefits and all expenses incurred", no evidence of such loss and expense is presented in the record. It is therefore unnecessary for us to consider whether the Agreement authorizes the Board to grant the requested relief regarding benefits and expenses.

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 Carrier violated the Agreement.

AWARD

Parts 1, 2 and 4 of the claim are sustained. Part 3 of the claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 26th day of February 1965.