

Award No. 13758
Docket No. CL-15240

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5642) that:

(a) Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the discipline rules, when it imposed discipline of dismissal from service upon M. T. Silves, Clerk, Oil City, Pennsylvania, Northern Region, effective September 23, 1963.

(b) M. T. Silves should be restored to service of the Carrier with seniority and all other rights unimpaired and his record cleared.

(c) M. T. Silves should be reimbursed for all wage loss sustained as a result of Carrier's action, and as provided in Rule 7-A-1(d), commencing September 23, 1963, and continuing until adjusted. [Docket 1475]

OPINION OF BOARD: This is a discipline case. The claimant, a 36-year employe of the Carrier, was dismissed from service as of September 23, 1963, after having been charged with and tried for "Failure to properly fill yard conductor's position on crew T-24 on Sunday, July 14, 1963. . . ."

Despite certain *pro forma* allegations by the Employes that Claimant was not given a fair trial, the transcript of the trial proceedings reveals no prejudicial error in the conduct of that hearing. As the Board said in Award 12738 (with this Referee participating):

"As to the conduct of the hearing by the official who preferred the charge against Claimant, the Board necessarily must examine the record of that proceeding before deciding whether or not there is evidence of bias or prejudice on the part of the official. It is not enough to show that he presided; there must be evidence that his conduct or actions were so prejudicial as to deprive Claimant of a fair and impartial trial. (See Awards 6108, 6307, 5665.) There is no such evidence in this record. The official was not a witness, as

alleged; he did not testify against the accused, nor, as is sometimes the case, was his examination of Claimant designed to entrap or confuse him into making admissions against interest. We can find nothing prejudicial in the conduct of the presiding official from the transcript of the record of the investigation."

The real issue here is whether the discipline imposed was so excessive as to amount to an abuse of discretion by the Carrier. The record shows that Claimant admitted his guilt, that he had "overlooked" the senior man entitled to be called and used as a conductor; that as a result Carrier had to pay a run-around claim amounting to four hours' pay to the senior conductor. For this offense, Claimant was dismissed after serving the Carrier for some 36 years, 23 years of which period was service as a crew dispatcher.

The Carrier, as justification for the action taken in this case, states in its Ex Parte Submission that it dismissed Claimant "because of his entire discipline record, . . ." It should not be necessary to point out here the recognized rule of law that the accused may only be tried for the specific offense charged, and that a finding of guilt or innocence must, therefore, be strictly confined to that particular offense. Claimant was not charged with misconduct arising from acts, or failure to act, in the past; his sole alleged offense, which he admitted, was that he had called the wrong conductor.

While this Board has consistently held it proper for a carrier to examine an employe's personal record before assessing discipline, here it appears reasonable to conclude from Carrier's own statements that the Claimant's dismissal was "because of his entire discipline record" for it also concedes in its submission that "Ordinarily, an offense such as that committed by the Claimant . . . standing alone, is not sufficient cause for major discipline." We agree.

In view of the foregoing, the Board finds the action of the Carrier in dismissing Claimant from service for the stated reasons was arbitrary, unjust and unconscionable.

Claimant shall be restored to service with seniority and all other contractual rights unimpaired. His record shall be cleared of the disciplinary entry. The record shows the Employes have requested the Board to find that Award 5821, involving these same parties and Agreement, is controlling here. We so find. Accordingly, the claim for reimbursement for all wage loss sustained 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 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 Carrier's assessment of discipline was arbitrary, unjust, and unconscionable.

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AWARD

Claim sustained to extent shown in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

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