

Award No. 14375
Docket No. CL-15295

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5668) that:

(a) The Carrier did not properly determine that Clerical employee, Mr. E. M. Turner, was guilty of the mistake with which he was charged and the discipline imposed by the Carrier against Clerk E. M. Turner was unreasonable, unjust and a violation of the rules of the Clerks' Agreement.

(b) Mr. Turner shall be restored to the service of the Carrier with seniority and all other rights unimpaired.

(c) Mr. Turner shall be compensated one day's pay each day, five days a week, beginning October 8, 1963, and continuing until he is restored to service.

OPINION OF BOARD: On October 8, 1953 Claimant was dismissed from service as a yard clerk at Carrier's Inman Yard at Atlanta for the mishandling of a carload of potatoes. Claimant was charged with erroneously listing the car to East Point, Georgia instead of Atlanta, its proper destination.

It is noted that Claimant, on a leniency basis, was restored to service with seniority rights unimpaired on December 24, 1964.

After his dismissal, Claimant requested an investigation, and a hearing was subsequently held pursuant to the rules.

Claimant, through the Organization, contends that he should be granted the relief requested for the following reasons: (1) The evidence was insufficient to support the charge, (2) the discipline imposed by Carrier was excessively harsh as to be arbitrary and unreasonable, and (3), by way of mitigation, Carrier created conditions at Inman Yards which induced the making of clerical errors.

Carrier asserts that the record conclusively shows that Claimant was guilty of the charges made against him, the discipline was warranted and commensurate, and there is no showing that the discipline imposed was a result of arbitrary or capricious judgment or bad faith.

It is clear from the record that Claimant received a fair and impartial investigation. Indeed, the Organization in its Rebuttal Brief states: "We have not challenged the fairness of the investigation." In this connection, two items must be commented on. (1) The initial transcript was inaccurately transcribed, and was subsequently corrected. There is no indication that the inaccurate transcription resulted in prejudice to the Claimant. (2) The Organization emphasizes the role of Mr. L. L. Coursey as the judge, jury, and prosecuting attorney, and states: "To contend that he was not biased or prejudiced would indeed be questionable." There is no basis in the record to indicate bias or prejudice as a result of Mr. Coursey's triple role. Moreover, there was no objection made by the Organization as to this procedure.

We find there was sufficient evidence in the record to substantiate a finding that the Claimant was guilty of the charge. The requirement that the list be signed by the person completing the list assesses responsibility for the accuracy of the list on the person whose name or initials are affixed. This also has the effect of raising a presumption that the person who signed the list prepared the list, and the burden then becomes his to rebut the presumption. The record in this dispute indicates that Claimant signed the list but could not remember whether or not he made the erroneous entry. Under these circumstances, we hold that the Carrier was correct in finding Claimant at fault.

We come next to the determination of whether the discipline imposed was consistent with the gravity of the offense committed.

With respect to the question of excessive discipline, the prevailing view of this Board may be summarized as follows: The Board will not substitute its judgment for that of the Carrier unless (1) The penalty imposed is, on its face, unequivocally shocking and outrageous, or (2) it is shown, in all other cases where the harshness or severity of the penalty might be questioned, that the Carrier was arbitrary, capricious, acted in bad faith, or otherwise abused its discretion in assessing the penalty. In either case, the Board is empowered to exercise its discretion in mitigating the discipline imposed in order to conform the punishment to the offense committed. Award 11170.

In keeping with the Board's predisposition not to abuse managerial prerogatives, we would normally have been constrained to dismiss the claim. However, this claim is one of three that arose from dismissals at the Inman Yard within a period of four days in October, 1963. All three involved clerks who were dismissed for making clerical errors. (See Dockets CL-15296 and CL-15297.)

Considering the records in this and the companion cases, it is clear that Carrier's local officers embarked on a program of deterrent action in an attempt to improve efficiency which resulted in arbitrary punishment with respect to the individual Claimant.

Considering the record as a whole, we find that a six month suspension without pay was adequate penalty.

Pursuant to Award 13986, Carrier is entitled to deduct wages that Claimant earned or could have earned with reasonable diligence.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Agreement was violated

AWARD

Claim sustained consistent with this Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1966.