

Award No. 15082

Docket No. CL-16134

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5918) that:

(a) Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 6-A-1(a), 6-C-1(b) and 7-A-1(d), when it held Mr. R. E. Kelly, Clerk, Coach Lunch Room, Dining Car Department, Washington, D. C., out of service commencing February 26, 1962, and subsequently imposed discipline of dismissal from service.

(b) R. E. Kelly shall now be restored to service of Carrier with seniority and all rights unimpaired and his record cleared.

(c) R. E. Kelly shall now be reimbursed for all wage loss sustained as a result of the Carrier's action. [Docket 1589]

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

On and prior to February 26, 1962, Claimant R. E. Kelly was the incumbent of a regular position of Relief Clerk, Symbol C-95 in the Coach Lunch Room, Dining Car Department, Washington, D. C. He had a seniority date

"It is my understanding that Mr. Kelly's dismissal from service was appealed to, and subsequently denied by, the Manager Dining Car Service in accordance with the provisions of Rule 7-A-1 of the applicable agreement.

Therefore, in order for the matter to be properly progressed, it must be appealed to the Manager Labor Relations in the form of a Joint Submission. Consequently, your appeal on behalf of Mr. Kelly is improperly filed under the provisions of Rule 7-B-1.

In view of the foregoing, your claim is hereby denied."

Then, on October 29, 1962, Division Chairman J. J. McNichol listed the claim for discussion with Mr. J. T. Blake, Assistant Personnel Manager. Following discussion, Mr. Blake denied the claim as follows in his letter of November 28, 1962:

"As you are aware, Mr. Kelly filed an appeal with the Manager Dining Car Service concerning the discipline assessed. The appeal was heard and subsequently denied. Further departmental appeal is not provided for in the agreement. Therefore, if your letter of October 29, 1962 is intended as a further appeal with respect to the discipline assessed Mr. Kelly, it has been improperly filed.

With respect to that portion of your letter of October 29, 1962, filing claim under the provisions of Rule 7-B-1 for alleged monetary loss sustained by Mr. Kelly from February 26, 1962, it is our contention that your claim was not properly filed within the prescribed time limit.

The claim contained in your letter of October 29, 1962 is hereby denied."

At the request of the Division Chairman, a Joint Submission was prepared covering this matter, a copy of which is attached as Exhibit No. 2.

The General Chairman presented the dispute to the Manager, Labor Relations, the highest officer of the Carrier designated to handle such matters, at a meeting on April 21, 1965. The Manager denied the claim by letter dated May 7, 1965. The matter was again discussed at a special meeting on November 16, 17 and 18, 1965, and on November 22, 1965, the Manager reaffirmed his previous decision.

(Exhibits not reproduced.)

OPINION OF BOARD: After a careful review of the voluminous Record and Transcript, we do find that the Employees' claim has been properly presented and progressed on the property in accordance with the applicable rules of the Rules Agreement and is properly before the Board for determination.

The Board's function in all discipline cases on appeal is not to substitute its judgment for that of the Carrier, weigh the evidence, or appraise the credibility of witnesses. However, the Board does have the responsibility to determine if substantial or competent evidence, if believed, supports the charges to sustain a finding of guilty. Also to insure the one charged was accorded due process of a fair and impartial trial.

From the transcript of the trial we do find that Claimant did receive a fair and impartial trial in accordance with the terms of the existing agreement as provided for in Rule 6 of the Agreement, and there is ample evidence in the trial record which establishes that Claimant failed to properly perform his assigned duties on the specific dates in question.

Having ascertained from the trial record that Claimant was afforded due process and that substantial evidence was adduced to sustain a finding of guilty, we must now determine whether, as urged by the Organization, the discipline assessed by the Carrier was excessive or extremely harsh under the circumstances shown.

The evidence shows that preceding his four years in the Dining Car Department the Claimant worked five years in the Ticket Receiver's Office, a position in which Claimant handled money on every tour of duty. Insofar as his record shows, no complaints were made by the Carrier over this length of service that Claimant had not properly performed his duties or mishandled money. In another case involving the same parties, same Rules Agreement, the Board found in Award 4826 (Carter), stated in part:

" . . . While we cannot condone the conduct of this employe and the methods employed by him in an attempt to avoid responsibility for his act, we do feel that a dismissal from the service was extremely harsh under the circumstances shown. . . ."

In view of the circumstances shown, we find that disciplinary action was warranted, but dismissal from the service is found to be excessive. Claimant should be restored to service of the Carrier with seniority rights unimpaired, without compensation for time lost. This, we believe, is an adequate penalty to insure Claimant's compliance to the Rules of the Agreement and the directions of the Carrier in the future.

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 disciplinary action was warranted, but dismissal from the service found to be excessive under the circumstances shown.

AWARD

Claimant shall be returned to service with seniority rights unimpaired. Claim for monetary loss denied and the disciplinary action taken to remain on his record in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December 1966.

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