

Award No. 15572
Docket No. MW-16176

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
NORFOLK AND WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Section Laborer Edward Nichols from service on May 25, 1965 for the alleged "fifth violation of Vice President and General Manager's General Notice dated December 1st, 1954 and amended thereto July 15th, 1955" was without just and sufficient cause and disproportionate to the alleged offense. (Carrier's File M-1697.)

(2) The claimant be reinstated to service with seniority, vacation and all other rights unimpaired.

OPINION OF BOARD: Claimant was notified by his immediate supervisor on May 25, 1965 of his dismissal from Carrier's service "account fifth violation of Vice President and General Manager's General Notice dated December 1st, 1954 and amended thereto July 15th, 1955." An investigation was duly held in accordance with Rule 32(a) of the Agreement between the parties. Thereafter, an appeal for Claimant's restoration to service was discussed in conference on August 24, 1965 and ultimately denied by Carrier's Senior Vice President by letter to Petitioner's General Chairman dated September 3, 1965. Petitioner contends that the discipline of dismissal assessed against Claimant was without just and sufficient cause and wholly disproportionate to the alleged offense.

In the first instance, Carrier contends that during the investigation Claimant admitted that he was guilty of violating the Vice President and General Manager's General Notice of December 1, 1954, pertaining to garnishments, and that the dispute was handled strictly on a leniency basis on Carrier's property.

The record reflects that Claimant had four previous garnishments while in the service of Carrier. On each occasion, Carrier notified Claimant in writing that garnishments violated the aforesaid General Notice and each notice bore a notation that the third offense would be cause for dismissal from service. The gravamen of Claimant's position at the investigation was that if reinstated, he would endeavor to avoid further garnishments. Moreover, the claim as submitted to this Board suggests Claimant's plea for leniency in that it does not include a monetary claim.

Petitioner asserts that the evidence adduced at the investigation does not conclusively establish Claimant's violation of Carrier's General Notice upon which Claimant's dismissal was based. We cannot agree with Petitioner's contention as Claimant readily admitted the indebtedness underlying the wage attachment, and was fully cognizant of the penalty that would be involved in the event of a fifth violation of Carrier's General Notice dated December 1, 1954 and Amendment thereto dated July 15, 1955. At no time during consideration of the dispute on the property did Petitioner question the conduct of the garnishment proceedings under the laws of West Virginia. Such contention cannot now for the first time be considered by this Board. Awards 5469, 6657, 14357. On the basis of all the evidence of record, we find that the claim was handled on the property ultimately as a request for leniency. Therefore, it cannot now be treated on any other basis. This Board has consistently held that although we may not agree with the position of a Carrier, the issue of reinstatement on a leniency basis is solely within the managerial discretion of such Carrier. Awards 8991 and 11914. Accordingly, we must deny the Claim.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. A. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1967.