

Award No. 15995
Docket No. CL-16775

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

**NORFOLK AND WESTERN RAILWAY COMPANY
(Formerly Wabash Railroad Company)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6134) that:

(1) Carrier violated the Rules of the Freight Handlers' Agreement when on October 19, 1965, it removed Mr. Mikolaj M. Siatkowski from its service at the East St. Louis, Illinois Freight House on the St. Louis-East St. Louis Terminal without according him his rights of an investigation as required by Rule 17(a) of the Freight Handlers' working agreement.

(2) Mr. Mikolaj M. Siatkowski shall be restored to service with seniority and all other rights unimpaired.

(3) Mr. Mikolaj M. Siatkowski shall be compensated for all wage losses incurred on and after October 19, 1965, until reinstated.

EMPLOYEES' STATEMENT OF FACTS: The Claimant Mr. Siatkowski was assigned as a freight handler performing work in the Cooper Shop, East St. Louis Freight House, with a work week from Saturday through Wednesday, rest days Thursday and Friday, hours of assignment 8:00 A. M. to 5:00 P. M. with one (1) hour for lunch. His seniority date is November 3, 1951.

On July 30, 1965, a letter was written and headed "To Whom It May Concern" signed by Fred C. Reynolds, M. D., Professor of Orthopedic Surgery, Washington University School of Medicine, which states under certain conditions Mr. Siatkowski could return to work as of July 30, 1965. Employees' Exhibit No. 7.

The employee's status change report Form 1761 dated August 3, 1965, to Mr. F. A. Johnson, Manager-Personnel, and signed by the Agent Mr. R. J. Hillgamyer states that Mr. Mikolaj M. Siatkowski was granted a leave of absence from December 28, 1964 to July 30, 1965, account of injury. Returned from leave of absence July 31, 1965. Employees' Exhibit No. 8.

man, headaches, dizziness and numbness of his hands. Plaintiff was required to obtain the services of physicians and hospitals, and will in the future continue to require medical and hospital treatment. Plaintiff will in the future continue to suffer pain and disability. Plaintiff has lost wages and will in the future lose wages, as a direct result of his injuries."

Complete copy of that complaint is attached hereto and made a part hereof, marked Carrier's Exhibit A.

For some three (3) years Mr. Siatkowski had not performed any duties for the Carrier other than such duties as counting the contents of, repacking and retaping or nailing up small cartons and boxes in the Cooper Shop. Other employees holding regular assignments also worked in the Cooper Shop. There was not enough of the light duties above mentioned to occupy Mr. Siatkowski's time. As a result he had considerable unoccupied time on his hands but when requested to sweep the floor or wash windows at the Freight Station he would reply that due to the pain in his back he was unable to do those tasks.

As Mr. Siatkowski still after this lapse of time apparently could not or would not perform the normal duties of a freight handler and as his actions on the property had not indicated any improvement in his condition it appeared the efforts to rehabilitate him were not producing the hoped for results and he was on October 18, 1965, advised that he would no longer be permitted to report at the Cooper Shop.

Mr. Siatkowski has not been disciplined or dismissed. He is still carried on the seniority roster for freight handlers on the St. Louis Terminal Division Seniority District with a seniority date of November 3, 1951, the date he was employed.

Copy of all of the correspondence had between the representatives of the parties is attached hereto and made a part hereof, marked Carrier's Exhibit B.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was assigned as a freight handler at Carrier's Cooper Shop, East St. Louis Freight House. In October, 1962 he complained of pains in his back, and shortly thereafter entered the hospital for treatment and a spinal fusion. In December, 1964, Claimant again entered the hospital for additional treatment and surgery.

During the period from October, 1962 to October, 1965 Claimant performed very light tasks for the purpose, as Carrier asserted, "to rehabilitate him . . . and to acquire the ability in a gradual manner to do the work normally required of a freight handler."

On October 15, 1965 Claimant filed a complaint in the Illinois Circuit Court against Carrier for money damages alleging "permanent and painful injuries to his back, hips and legs . . . dizziness and numbness of his hands."

Four days after the court complaint was filed, Carrier removed Claimant from service because he was unqualified for any position as a freight handler. Carrier's contention being that to allow Claimant to continue in service in the condition described in his court complaint would have "imposed an industrial risk upon the Carrier and an apparent danger to the Claimant as well as his fellow employees."

Claimant, through the Organization, asserts that Carrier violated Rule 17(a) of the Agreement by dismissing him from service without according him his right of an investigation.

Rule 17(a) reads in part as follows:

"(a) An employe who has been in service sixty (60) days or more shall not be disciplined or dismissed without investigation . . . The investigation shall be held within seven (7) days of the date when charged with the offense or held from service. A decision will be rendered within seven (7) days after the completion of investigation."

Under the circumstances of this case, Claimant has erroneously assumed that his removal from service was punishment for filing the court complaint, rather than for disqualification to perform service as a freight handler.

This record clearly indicates that discipline was not involved and Rule 17(a) was not applicable.

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 Agreement was not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1967.