

Award No. 16678
Docket No. CL-16381

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6024) that:

(1) The Carrier violated the Clerks' Agreement of December 1, 1956, as amended, at Savannah, Georgia Yard Office when it assessed unfair and unnecessarily harsh discipline and failed to follow agreement procedure, against Yard Clerks W. D. Stephens and T. E. Rhodes, and therefore,

(2) Clerk W. D. Stephens shall now be paid a total of fourteen (14) days' pay at the regular rate of pay, that is for June 29, 30, July 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17 and 18, 1965; and,

(3) Clerk T. E. Rhodes shall now be paid a total of fourteen (14) days at the regular rate of pay, that is for June 29, July 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17 and 18, 1965.

OPINION OF BOARD: The Claimant W. D. Stephens is employed, by the Carrier, as a yard clerk at Savannah, Georgia. His assigned hours of work are from 12:00 Midnight to 8:00 A. M., Saturday through Wednesday, with rest days of Thursday and Friday.

The Claimant T. E. Rhodes is employed, by the Carrier, as a yard clerk at Savannah, Georgia. His assigned hours of work are from 4:00 P. M. to 12:00 Midnight, Friday through Tuesday, with rest days of Wednesday and Thursday.

Claimant Stephens worked beginning Saturday night, May 8, 1965 to 8:00 A. M., Sunday, May 9, 1965. Claimant Rhodes worked from 4:00 P. M. to 12:00 Midnight on May 9, 1965.

The following communication was addressed and sent to the Claimants:

"CENTRAL OF GEORGIA RAILWAY

Savannah, Georgia
June 16, 1965

Mr. W. D. Stephens, Yard Clerk
Mr. T. E. Rhodes, Yard Clerk

Arrange to report for formal investigation to be held in the office of the Terminal Trainmaster, Savannah Yard, Savannah, Georgia at 10:00 A. M., E. S. T., Tuesday, June 22, 1965.

This investigation will be held to develop the facts and determine your individual responsibility, if any, in connection with the mishandling of waybill covering two cars, viz: SOU 44107 and ACL 37718, marble slabs, resulting in serious delay in forwarding ACL 37718 account of no bill.

You may have representatives and/or witnesses present at this investigation in your behalf, if desired, as provided by your schedule agreement.

/s/ E. R. Oliver
E. R. Oliver
Superintendent"

The hearing was held, as scheduled, before Mr. E. B. Ulmer, Terminal Trainmaster. The Claimants were present at the hearing and were represented by Mr. B. H. Clegg, General Chairman, Brotherhood of Railway and Steamship Clerks.

A transcript of the testimony adduced at the hearing is a part of the record in this dispute.

Under date of June 29, 1965, Superintendent E. R. Oliver, addressed the following communication to the Claimants:

"CENTRAL OF GEORGIA RAILWAY COMPANY

Savannah, Georgia
June 29, 1965-ero-s

Mr. W. D. Stephens, Yard Clerk
Central of Georgia Railway Company
Savannah, Georgia

Mr. T. E. Rhodes, Yard Clerk
Central of Georgia Railway Company
Savannah, Georgia

Referring to investigation held with you by Terminal Trainmaster Ulmer on June 22, 1965, to develop the facts and determine your individual responsibility in connection with the mishandling of waybill covering two cars, SOU-44107 and ACL-37718 on a multiple bill resulting in serious delay to ACL-37718 account 'No Bill.'

Investigation developed that through your negligence this ACL car was seriously delayed, and for your failure to properly handle,

you are suspended from service without pay beginning June 29, 1965, and ending at Midnight, July 18, 1965.

Thereafter, you will be considered voluntarily off until you mark up.

Yours very truly,

/s/ E. R. Oliver
Superintendent"

The Claimants raise two specific points in support of their position.

The first point raised is that there was a procedural violation in that the charges were preferred by the Superintendent and that the notice of discipline that was assessed was also issued by him, but that the investigation itself was actually conducted by a person other than the Superintendent, to wit, the Trainmaster; that Claimants were denied an avenue of appeal guaranteed them by the applicable rules of the Agreement.

The second point raised is that the discipline imposed was harsh and excessive.

With reference to point one, an examination of the transcript of the hearing discloses that no timely objection was raised by the Claimants or their representative that the hearing violated the provisions of the applicable rules of the Agreement. Instead Claimants and their representative elected to willingly proceed with and take part in the proceedings. This Board has held on any number of occasions that objections to the manner in which a hearing is being conducted must be raised during the hearing. The failure to raise such objection constitutes a waiver. See Awards 15027, 14573, among others.

We find nothing in the Agreement involved in this dispute that prescribes who shall prefer charges, conduct investigations and/or render decisions; there is no rule which specifically states that the officer conducting the hearing must render the decision or assess the discipline. See Awards 15714, 14021, 13383, among many others.

Further, the record in this dispute indicates that the procedure followed is the established practice for the handling of discipline cases on this Carrier.

The fact that the Superintendent rendered the decision did not preclude his acting as the appeals officer. See Award 15714.

With reference to point two, this Board has held on any number of occasions that our function in discipline cases is not to substitute our judgment for that of the Carrier or to decide the matter in accord with what we might or might not have done had it been ours in the first instance to determine. We do pass upon the question whether, without weighing it, there is some substantial evidence in the record to sustain a finding of guilty. Once that question is decided in the affirmative the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier and we are not warranted in disturbing the penalty imposed unless we can say that it clearly appears from the record that the action of the Carrier with respect

thereto was so unjust, unreasonable or arbitrary as to constitute an abuse of discretion. Whether or not the penalty imposed is justified depends upon many factors and the circumstances in each case. In order for this Board to overrule, reverse, set aside or reduce the penalty imposed, it is incumbent upon the Claimants to show that the Carrier in assessing the penalty was vindictive, arbitrary or malicious.

In determining the guilt or innocence of an employe, the employe's past work record may NOT be considered in determining as to whether or not the employe is guilty of the charges brought against him. The past work record of the employe may and can be considered in assessing the penalty.

We have carefully examined the record and find that the Claimants were given and did have a fair and impartial hearing. It is our opinion that the record discloses sufficient competent evidence to support the charges against the Claimants and that the Carrier was justified in so holding.

We hold that the penalty imposed by the Carrier in this dispute was justified in view of the evidence presented at the hearing and in view of the past records of the Claimants which were none too favorable.

Discipline is a very serious matter for the safe operation of a railroad. The Carrier, of necessity, must and does have the right to require of its employes to faithfully and competently carry out their respective duties and assignments and to comply with the order of those authorized to give them.

We will deny the claims.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1968.

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