

Award No. 18009  
Docket No. CL-18529

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Paul C. Dugan, Referee

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**PARTIES TO DISPUTE:**

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

**NORFOLK AND WESTERN RAILWAY COMPANY**

**(Involving employees on lines formerly operated by  
the Wabash Railroad Company)**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6676) that:

(1) Carrier violated the provisions of the Clerks' Agreement when on January 17, 1969, it arbitrarily removed R. F. Farris from service without affording him a fair and impartial hearing as provided for under Rule 28 also in violation of the time limit rule as provided for under Article V of the August 21, 1954 National Agreement.

(2) Carrier shall now restore R. F. Farris to his former position as Yard Clerk with all rights and fringe benefits unimpaired.

(3) Carrier shall now pay R. F. Farris eight (8) hours at the pro rata rate of his former position for January 17, 1969 and for each work day thereafter until he is properly restored to service.

(4) In addition to the money amounts claimed herein, the Carrier shall pay claimant an additional amount of 6% per annum compounded annually on the anniversary date of claim.

**OPINION OF BOARD:** Claimant received notice from Carrier in writing, dated November 7, 1968, reading as follows:

"Arrange to report to Superintendent's office, 780 East Cerro Gordo Street, Decatur, Illinois, 9:00 A.M., Tuesday, November 12, 1968, for investigation for the purpose of determining the facts and circumstances and to fix the responsibility, including yours, if any, concerning irregularities in the handling of the Lafayette Freight Station accounting pertaining to:

1. The preparation and transmitting of case sheet Form AD 413.
2. The handling of company funds and prompt remittance of patron's checks.
3. The handling of uncollected accounts.
4. The condition of files.
5. The handling of order notify bills of lading.
6. The handling of utility bills.
7. The handling of claims.
8. The handling of records and correspondence.
9. The handling of corrections.
10. The delay in presentation of freight bills.

If you desire representative of your organization present, arrange accordingly.

/s/ M. W. Hallenbeck  
Superintendent"

Carrier's M. W. Hallenbeck by letter dated January 17, 1969, advised Claimant that he was dismissed from service of Carrier effective January 17, 1969 for his failure to properly perform his duties and to properly discharge his responsibilities as Cashier, the position to which he was assigned, by failing to: (1) promptly and properly prepare and transmit Cash Sheet Form AD 413; (2) promptly remit Company funds received from patrons, in some instances unnecessarily holding checks for sizeable amounts several months prior to remitting; (3) properly handle uncollected accounts; (4) properly handle Order Notify bills of lading; (5) promptly process corrections and (6) promptly prepare and present freight bills.

The Organization contends that (1) Claimant was not granted a fair and impartial hearing as contemplated by Rule 28 in that (a) Carrier permitted its witnesses to be present prior to taking the witness stand and being permitted to listen to testimony of other witnesses; (b) Superintendent Hallenbeck, the hearing officer, lacked jurisdiction over the investigation because Claimant wasn't on his Division Seniority Roster; (c) joint hearing was held of two different classes and crafts of Employees, the Clerks and TCEU, over the protest of both crafts; (2) that the notice of November 7, 1968 received by Claimant is not a proper notice in that it is indefinite and did not apprise Claimant of the precise charge against him so as to enable him to properly prepare his defense; (3) that Carrier had factual knowledge of alleged irregularities in the handling of the Lafayette Freight Station accounts, but that Claimant didn't receive a notice to report for investigation until approximately 6 months later; (4) Claimant was not assigned to the Cashier's position after the first of July, 1968, some 4 months prior to receiving said investigation notice and thus a violation of Article V of the August 21, 1954 Agreement; (5) that dismissal was not warranted in this instance due to the fact that Claimant to no avail requested assistance from his immediate supervisor due to 60% increase in business on said Cashier's job, and no charges were made against Claimant of making mistakes, and the only thing

proved from the hearing was that it was too much work for one man to handle, which caused the late reports.

First, in regard to the procedural defects raised by the Organization, and, in particular, the alleged violation by Carrier of the time limit rule, said Article V of the August 21, 1954 Agreement refers to all claims or grievances of the employe involved must be presented \* \* \* within 60 days from the date of occurrence \* \* \*. Article V, therefore, does not require or limit Carrier, in this instance, to have held said investigation regarding Claimant, within 60 days from the date it first learned of the alleged irregularities involving Claimant, as the Organization would have us believe. Further, the only restriction placed upon Carrier in regard to holding the investigation is found in Rule 28 of the Agreement, requiring Carrier to hold the investigation within seven (7) days of the date when charged with the offense. Carrier complied with said requirement in this instance. Also, the Organization's contention that Carrier waited 5 to 6 months after discovering the irregularities before notifying Claimant is also without merit inasmuch as Carrier's Auditor, Mr. O. E. Schieferle, testified that the audit of the Station in question was not completed until October of 1968. There is no rule in the Agreement that prohibits or restricts Carrier from having its witnesses present prior to taking the witness stand.

The Organization argues that inasmuch as Claimant was not charged with any violation of the rules of the Carrier in the letter of Carrier's Superintendent M. W. Hallenbeck of November 7, 1968, Claimant should have received another letter setting out the "precise" charge, and therefore the notice of November 7, 1968 is not a proper notice due to indefiniteness and failure to apprise Claimant of the precise charge against him so as to enable him to properly prepare his defense.

With this contention of the Organization we do not agree. As was said by this Board in Award No. 11782:

"Even if the recited purpose of the hearing was to determine 'facts', there is nothing in the Agreement prohibiting the investigation official from evaluating those facts and taking the appropriate action thereon."

Further, we find that said notice in this instance complied with the general principles set down by this Board in numerous awards in that absent a special rule requirement, it is sufficient if the notice is so worded as to fully apprise the recipient of the nature of the offense charged, so that he may become fully prepared to defend himself. See Award No. 11170. Also, the formation of a charge and the giving of notice thereof need not be in the technical language of a criminal complaint. See Award No. 3270.

We feel that Claimant clearly understood that he was being investigated and that he understood the dereliction of duty affording the basis of the complaint. We do not feel that Claimant was misled or in any manner prejudiced by said notice. If Claimant felt that he was disadvantaged at the hearing because of lack of specific dates, etc., he could have requested a continuance at the conclusion of Carrier's case in order to bring in any rebuttable evidence or other matters in relation to his defense to said charges.

In connection with the Organization objection that the hearing officer, Superintendent Hallenbeck, lacked jurisdiction over the investigation because

Claimant wasn't on his seniority roster, we find nothing in the Agreement that requires a certain specified officer of Carrier to conduct said investigation. Further, the record does not show that Superintendent Hallenbeck in this instance did not have jurisdiction over employes of the Lafayette Freight Agency. We, therefore, cannot conclude that Claimant was prejudiced by the fact that Superintendent Hallenbeck conducted said investigation.

We find no rule in the Agreement prohibiting the joint investigation as was conducted herein, involving two employes, on different crafts. Each employe had his representatives present and they were afforded the right to present evidence and to cross-examine Carrier's witnesses. Thus, we cannot say that Claimant was prejudiced in any manner by the holding of a joint investigation involving two employes of different crafts, in this instance, Claimant and his immediate supervisor, Agent W. L. Hinsley.

The record clearly indicates that there was abundant evidence showing gross neglect and indifference on the part of Claimant in regard to the performance of his duties. The fact that Claimant may have been overworked does not mitigate the seriousness of having large checks lying around and not forwarded to Carrier until many months later, together with other serious discrepancies as shown from the evidence presented by Carrier. Thus, Carrier clearly met its burden of proving that Claimant failed to properly discharge his responsibilities as Cashier as set forth in its said letter of dismissal to Claimant.

Further, we cannot conclude that Carrier's act of discharging Claimant from its service was arbitrary or capricious under the circumstances, taking into consideration the seriousness of the charges, and, therefore, we are compelled to deny the claim.

**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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1970.

## DISSENT TO AWARD 18009, DOCKET CL-18529

This award represents grave error. It misconstrues, distorts or ignores one of the basic purposes for which this Board was created.

During the debate which preceded adoption of the 1934 amendments to the Railway Labor Act creating this Board, the Carriers argued long and loud within and without the halls of Congress that such a tribunal as was being considered should not be granted authority to tamper with what they apparently considered to be their divine right to hire and fire. In short, they argued that the proposed Board should not be permitted to judge discipline cases.

Their arguments were rejected. But they did not give up. Ever since the Board has been in operation, Carriers and their representatives on the Board have contended that the Board should not substitute its judgment for that of the Carriers in discipline cases. To a degree they have been successful. But most referees qualify their agreement with the contention on the ground that it holds true only when there is no evidence of prejudgment, bias, discrimination, or other actions that can be considered arbitrary or capricious and amounting to abuse of discretion.

These qualifications, when rigidly adhered to, generally provide a satisfactory degree of justice to accused employees.

A further principle, often employed by referees, is that even when the Carrier appears to have brought itself within the usual qualifications the Board has authority and the duty to examine the degree of discipline imposed, and to modify it when the record indicates excessive discipline has been assessed.

In the present case none of these safeguards were applied. The record left no doubt that the charges upon which claimant was made to sacrifice his economic life were what railroad men might term "trumped up" to satisfy the autocrats of Roanoke.

Time after time this Board has interceded to provide a measure of justice to such victims of managerial ineptitude by reducing or eliminating the clearly excessive discipline.

But in this Award the Board has shirked its plain duty and has thus committed palpable error.

For these and other equally obvious reasons, I dissent.

C. E. Kief  
Labor Member  
7-28-70

**CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S  
DISSENT TO AWARD 18009, DOCKET CL-18529**

**(Referee Dugan)**

In making his intemperate and manifestly false accusation that the charges against Claimant were "trumped up" to satisfy the autocrats of Roanoke", the Dissenter cites no supporting evidence and ignores the Claimant's repeated admissions.

Under the sound principles consistently followed by this Board, the facts of record left no alternative but to deny the claim.

**G. L. Naylor**

**R. E. Black**

**W. B. Jones**

**P. C. Carter**

**G. C. White**