

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21551
Docket Number CL-21860

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8250, that:

1. The Agreement between the parties was violated when Mr. E. T. Kagey was dismissed from service as a result of an investigation conducted December 6, 1974.

2. Carrier shall now restore E. T. Kagey to service with all rights unimpaired and compensate him for salary lost, retroactive to and including December 23, 1974.

OPINION OF BOARD: Claimant herein was dismissed from Carrier's service effective December 23, 1974 for violation of the Carrier's policy with respect to garnishments. An investigative hearing was held on December 6, 1974.

The dismissal was challenged by Petitioner in the first instance on the basis of a procedural defect. It was argued that the notice of hearing was not precise; that argument was raised for the first time in a letter dated September 3, 1975. The record of the investigation does not support this procedural allegation. Claimant had been apprised of the nature of the charge against him in writing and at the time of the hearing he was prepared to proceed and so indicated. The objection was both untimely and unwarranted.

On the merits, we have a significant problem. The Carrier argues that Claimant had six garnishments in six months and was fired for violation of Company policy on garnishments. First, there is no information whatever in the record to indicate the previous garnishments, if any, except in Carrier's argument. By letter dated September 8, 1975, for the first time there is an indication in a letter to the Organization's General Chairman that Claimant's wages had been attached three previous times. However, in the hearing itself, there is some indication that all previous garnishments were for the same indebtedness. Of even greater importance is the complete absence of

any defined Carrier policy with respect to garnishments, in the record of this dispute. If Carrier indeed has a specific policy with respect to garnishments, it is reasonable to assume that it has at sometime been promulgated; there is no indication of that having been done in this record.

Under the circumstances it is difficult to understand the conclusion reached by Carrier in this dispute: dismissal for violation of the company policy with respect to garnishments. Since we do not know what that policy is, it is impossible to know whether or not the discipline imposed was consistent with that unknown policy. On the other hand, Claimant clearly admitted that he was guilty of the charge of having his pay attached and we must accept the Carrier's contention that he had been disciplined in the past for a similar infraction. There is no question but that this Carrier, as most other companies, objects to employe garnishments and has some type of policy and disciplinary process (though unspecified in this instance) in this regard. In the light of the peculiar handling of this disciplinary matter as indicated above, we are persuaded that there is no justification for the ultimate penalty of dismissal. We find, therefore that Claimant should be reinstated to his position but without compensation for time lost; the time off shall be considered a disciplinary lay-off.

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 discipline imposed was inappropriate.

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Claim sustained to the extent indicated in the Opinion above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1977.