

SPECIAL BOARD OF ADJUSTMENT NO. 192

PARTIES:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES  
and  
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 41.

STATEMENT  
OF CLAIM:

Claim of the System Committee of the Brotherhood that Anthony Damiano, Stowman, Pier 21, North River, New York, N. Y., who was dismissed from service on April 13, 1956, be returned to service and compensated for all time lost, less earnings made in other employment during time out of service.

FINDINGS:

After investigation the claimant was dismissed on charges of gambling on B&O property and of roughing up a Patrolman (Special Officer) while in the performance of the latter's duty.

The employes contend that this disciplinary action should be set aside on the ground that the Carrier failed to comply with the requirements of Rule 47(c) in that the claimant was not granted another "hearing" on appeal before the Superintendent and on the further ground that the charges against the claimant were not substantiated.

It is questionable as to whether or not Rule 47(c) contemplates a repetition (on appeal) of the full scale investigation held before the first hearing officer as contended by the employes. However, it is not necessary for us to decide that question inasmuch as it is not shown that the employes complied with the technical requirement of Rule 47 (c) in serving a copy of the demand for a "hearing" upon the officer whose decision was being appealed, and the failure to do so would be fatal insofar as the right to such a "hearing" is concerned.

A review of the transcript of the investigation reveals that there was substantial evidence upon which to base a reasonable finding that the claimant was guilty of gambling on Company property. The evidence supporting the charge that claimant had "roughed up" the Patrolman is less convincing.

The claimant had been employed by the Carrier for only a few months and so far as the Board is informed he has had a good record during that period of service. Considering the nature of the evidence on the more serious charge of

roughing up the patrolman and the otherwise apparently good record of the claimant we find that dismissal was too severe a penalty and that the claimant should be restored to duty with seniority unimpaired but without pay for time lost.

AWARD

Claim disposed of as indicated in Findings.

/s/ Francis J. Robertson  
Francis J. Robertson  
Chairman

/s/ E. J. Hoffman  
E. J. Hoffman  
Employee Member

/s/ T. S. Woods  
T. S. Woods  
Carrier Member

Dated at Baltimore, Maryland this  
1st day of December, 1958