

C O P Y

ORG. FILE 8-26
CARRIER FILE R-12049
NRAB FILE CL-8249

AWARD NO. 1
CASE NO. 1

SPECIAL BOARD OF ADJUSTMENT NO. 194

PARTIES The Brotherhood of Railway and Steamship Clerks,
 Freight Handlers, Express and Station Employees
TO

DISPUTE St. Louis, San Francisco and Texas Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the terms of the Agreement between the parties in its treatment of steno-clerk, Mrs. Alpha E. Odom, Ft. Worth, Texas when on October 30, 1954 she was dismissed from the service of the Carrier without just cause.

(2) Mrs. Alpha E. Odom now be reinstated with all rights unimpaired and be reimbursed for all monetary losses sustained at the rate of the position occupied on October 30, 1954.

FINDINGS: Special Board of Adjustment No. 194, upon the whole record and all the evidence, finds and holds:

The Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as amended.

This Special Board of Adjustment has jurisdiction over this dispute.

Claimant was dismissed from service October 30, 1954 after investigation held on October 28, 1954 upon a charge in writing dated October 25, 1954 which read:

"Arrange to report to assembly room General Office Building Ft. Worth 2:00 P.M. October 28 with a representative of your choice for investigation in connection with your failure to take care of your indebtedness in such manner that it is being called to the attention of Officials of Frisco Railway."

The charge was based upon Rule 702 in the Book of Rules of the Transportation Department which, so far as pertinent, reads:

"Employees . . . who do not . . . handle their personal obligations in such a way, that the railroad will not be subject to criticism and loss of good will, will not be retained in the service.

"Employees failing or refusing to pay their just debts, or against whom bills are frequently presented to the railroad for payment, or whose wages have been garnisheed will, unless satisfactory reason is given, be dismissed from the service."

On October 20, 1954, Claimant had been notified to appear on October 25, 1954 for investigation on the same charge. She appeared with an attorney. The Carrier official designated to conduct the hearing refused to hold the investigation upon the ground that the attorney was neither an employee nor a duly accredited representative; and the charge was accordingly re-noticed for hearing on October 28, 1954, at which time Claimant appeared with a duly accredited representative who made objection that Claimant had been denied the right to have her attorney present at the investigation.

Claimant's representative also made objection at the hearing on October 28, 1954, that she had not been furnished with the transcript of a previous investigation upon the same charge held five months before on May 6, 1954. Claimant was represented at both investigations, the one on May 6 and the one on October 28, by the same accredited representative. There is no evidence of any request for the May 6 transcript until November 6, 1954, which request the Carrier complied with on November 19, 1954. At the May 6 investigation on the same charge, Claimant's attention was called to Rule 702 upon which the charge was based. Moreover, the record also contains a bulletin dated February 5, 1952, addressed to all clerical and other employees requiring them "to be familiar with and to conform to" the Book of Rules and stating where they would be made available. It is established by the evidence of record that Claimant's pressing financial obligations were then discharged by means of a Credit Union loan. The only action taken by the Carrier as a result of the May 6 investigation was a warning in writing on May 10 the receipt of which Claimant acknowledged in writing the same day.

The investigation and hearing held on October 28, 1954, was based upon occurrences subsequent to May 6, 1954.

First. There is evidence of record by way of excuse for the financial condition in which Claimant found herself; and the Organization petitioned for consideration of the case on a leniency basis which petition the Carrier denied.

The Carrier now contends that a petition for consideration on a leniency basis is a confession of the validity of the dismissal and that this Board therefore lacks authority to act on the claim in view of Third Division Award 6085 and First Division Awards 5300, 12503, 13052, 14421 and 14468. But we are unable to conclude upon the evidence of record that the Organization ever abandoned Item 2 of the claim and the case is therefore properly before us on the merits of the dismissal.

Second. The charge and the penalty assessed are sustained by the evidence of record.

The transcript of the May 6 investigation was relevant to show that Claimant was then put upon notice of Rule 702 in addition to the notice imparted by the 1952 Bulletin; and it was also relevant upon the issue of appropriate penalty. Claimant's right to a copy of the transcript of the May 6 investigation is based upon Rule 29 which puts an obligation on the Carrier to furnish such a copy to the duly accredited representative

"upon request for use in handling case on appeal."

No appeal was taken from the action taken by the Carrier on the May 6 investigation; and, when the first request was made by the accredited representative for a copy of the transcript later, the Carrier complied with the request.

Claim is made that the offense charged is not sufficiently serious to justify dismissal from service. There are certain types of offenses, such as assaulting passengers or patrons, that may justify dismissal, rule or no rule. Other types of less serious conduct may be made the subject of a specific rule, such as this one, which constitutes advance notice of the Company's personnel requirements. By posting the 1952 Bulletin, the Carrier put its employees on notice that the type of conduct described in the Rule is ground for dismissal. Moreover, in this case the dismissal was preceded five months before by a prior charge and warning.

We are unable to conclude that the Rule, or the manner in which it was enforced, were unreasonable or arbitrary.

Third. Various claims are made that Claimant was denied a fair and impartial hearing.

Rule 26 provides that at an investigation an employee may be represented

"by an employee of his own choice or one or more duly accredited representatives."

It is settled that carriers and employees under the Railway Labor Act may negotiate a rule which limits the representation that an employee may have (First Division Award 15575 citing *Butler v. Thompson*, 8 Cir., 192 Fed. (2d) 831). Under Rule 26 Claimant was not entitled to be represented at the investigation by her attorney who was neither an employee nor an accredited representative.

Claim is also made that a written report made by a Special Officer of the Carrier was received in evidence at the hearing and that the Special Officer was not called as a witness and offered for cross-examination. The written report was mainly confined to facts of judicial record, the substance of which was not denied by Claimant. Moreover, the record of the investigation does not show any demand for the production of the Special Officer for cross-examination, although Claimant requested the right to produce another witness and this was done.

Upon a review of the entire record we are unable to conclude that Claimant was denied a fair and impartial hearing at any stage of the proceedings.

A W A R D

Claim denied.

/s/ T. P. Deaton

Carrier Member

Dated at St. Louis, Missouri,
November 14, 1957.

/s/ Hubert Wyckoff

Chairman

I dissent.

/s/ F. H. Wright

Employee Member

Award No. 1
Case No. 1

DISSENTING OPINION OF EMPLOYE MEMBER:

Employee Member dissents from the findings and conclusions of the majority in that I do not feel due consideration was given to facts and circumstances, as contained in the written record which would sustain the charge on which Mrs. Odom was removed from service and further that even if sustained it would not justify the extreme penalty which the Carrier had at its command.

/s/ F. H. Wright
Employee Member