

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

The First Division consisted of the regular members and in addition Referee Robert G. Simmons when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

ATLANTA AND ST. ANDREWS BAY RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of C. A. Watson, brakeman, for reinstatement with pay for time lost. Discharged for alleged violation of Rule 31 at Panama City, Florida, July 4, 1939. Discharge notice dated July 20, 1939.

FINDINGS: The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

Rule 31, relied upon by the carrier, is as follows: "The use of intoxicants by the employes will promptly result in their dismissal from the service of the company."

This rule defines an offense and prescribes a penalty. It is not a self-operating rule. The procedure of determining whether or not an employe has committed the offense and is subject to the imposition of the penalty is set out in Article XV of the Agreement and is quoted in the submission. The Article prohibits the demeriting, disciplining or discharging of an employe without just cause. The Article clearly defines the procedure to be followed determining whether or not just cause exists.

1. It contemplates a preliminary inquiry by the carrier to determine whether or not a charge shall be placed against the employe.

2. If it is determined to charge the employe with some violation of the rules, then the employe is to be notified in writing of the charge or charges to be brought against him.

3. The above notice is to be given within ten days of the occurrence.

4. Within ten days after giving the notice, the investigation, required by the rule, shall be had.

5. At that investigation "all the evidence in the case will be submitted."

6. A record will be made and authenticated by both the carrier and the employe.

7. That record becomes the basis for any "discipline that may be administered," and constitutes the record upon which an appeal is based.

8. The accused may, if he desires, attend the investigation, hear all the evidence, "and be represented by fellow employes of his own selection."

9. A decision is to be made within 30 days after the investigation and the employe notified thereof in writing, including the penalty, if any is to be imposed.

A check of the procedure followed in the instant case as against the procedure required by Article XV may be summarized by reference to the above numbered paragraphs.

1. The inquiry was made.

2. The determination to charge the employe was made. The employe was not notified of the nature of the charges "to be brought against him." He was notified that an investigation by the carrier had been made of certain charges; that they had been found to be true, and that he was being dismissed effective the date of the notice, July 20, 1939.

3. The employer contends that it did not have information as to the alleged offense until July 16, 1939, and therefore could not give the notice within 10 days of the occurrence. Assuming, but not deciding, that the carrier has 10 days from the receipt of information of the alleged offense to give the notice, it is clear that no notice was given within the time specified, for the carrier did not give the employe notice of an investigation to be held until August 2, 1939, which was 17 days after the carrier admits having information of the alleged offense and 28 days after it occurred. On August 1, 1939, the employe requested an investigation. It may be that in so doing he waived the provisions of the rule. It is not necessary to determine that matter, for in any event the result would be the same.

4. An investigation was had within 10 days of the giving of the notice of August 2nd.

5-6-7. "All the evidence in the case will be submitted." See Awards Nos. 5248 and 5301 for a construction of such a rule. This rule requires that the evidence so submitted be that which tends to prove, disprove, or explain the acts allegedly done by the employe. The rule further requires that all the evidence to be considered by the official conducting the hearing shall be submitted at the investigation, before the close thereof, and be incorporated in the record of the hearing. This precludes the official conducting the hearing, and reviewing agencies from considering, for the purpose of determining guilt or innocence of the offense charged, "evidence" developed subsequent to the investigation and the authentication of the record. Without detailing the matters in the record this provision prevents the consideration of a part of the material contained in the carrier's submission herein. The authentication of the record is required for the obvious purpose of assuring reviewing agencies that they have before them the evidence submitted at the trial and considered by the investigating officials in reaching a decision. The record submitted in this case is not authenticated as required by the agreement.

8. This part of the agreement appears to have been complied with.

9. It is obvious that the decision, and the notification to the employe thereof, and the penalty imposed were all completed prior to the investigation. The provision of the agreement was not complied with after the investigation.

This division concurs in the contention of the carrier that rules should be faithfully observed. So should agreements. The obligation rests upon both the carrier and the employe.

The record establishes that the accused was first found guilty and sentence imposed—and subsequently tried. The agreement forbids such a procedure.

It also follows that the order of dismissal of July 20, 1939, is without force and effect and that the employe, C. A. Watson, by the procedure here followed, was not removed from the service of the carrier and has been at all times in the service of the carrier with full rights unimpaired by this procedure. He should be paid full wages for time lost as a result of having been kept from the actual performance of the duties which he was entitled to perform.

AWARD

Claim sustained per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

ATTEST: (Sgd.) T. S. McFarland
Secretary

Dated at Chicago, Illinois, this 31st day of March, 1941.