

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY 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 that:

(1) The Agreement governing hours of service and working conditions between the parties was violated by the Carrier at Lorain, Ohio, in the treatment accorded Rate and Bill Clerk Patricia C. Hoskinson, in the discipline administered in disqualifying her from the position to which she was regularly assigned, on June 23, 1952 and

(2) She shall now be restored to the position of Rate and Bill Clerk and compensated for all monetary or wage loss sustained on June 24, 1952, and each subsequent day thereafter until restored to the position from which removed; also her record shall be cleared of the alleged charge.

OPINION OF BOARD: Pursuant to notice dated May 23, 1952 an investigation was conducted by the Terminal Agent at Lorain on May 28, 1952 upon a charge that the claimant improperly authorized a change in the car number on a waybill. Rule 47 (a) provides for fair and impartial investigations and that "decision in writing will be rendered within thirty (30) days after completion thereof". Rule 47 (b) provides a right of appeal (a) to Superintendent, (b) to General Manager, etc., and 47 (c) provides that in event of appeal in writing "the employe shall be entitled to a fair and impartial hearing before the next proper officer."

In this case no decision in writing was rendered within 30 days after completion of the investigation, unless the service entry record dated June 23, 1952 and signed by the Superintendent can be so considered. It does not appear to be such a decision and it was not transmitted to claimant until July 3, 1952. The Superintendent did not conduct the investigation nor attend it.

The plain meaning of such a rule is that the official who conducted the investigation, heard the evidence and saw the witnesses will evaluate the evidence and decide whether the employe was guilty or innocent of the charge against him. Then within 30 days after completion of the investigation that decision must be placed in writing and transmitted to the employe. Such a decision may or may not include the imposition of discipline if found guilty. The investigation may have been conducted by one not authorized

to impose discipline and such action may be taken by the proper official on the basis of the decision mentioned. Rule 47 (f) indicates that the parties recognized the difference between a decision as to guilt or innocence and the imposition of discipline upon one found guilty.

As noted above the service entry record of discipline was signed by the Superintendent, before whom the claimant had a contractual right to a fair and impartial hearing on appeal. That entry shows that such official had determined the case against the claimant and she was thereby deprived of her contract right to a fair and impartial hearing before him on appeal.

Rights accorded to employes by rules such as Rule 47 are substantial ones and constitute their sole protection against arbitrary, capricious or discriminatory action by carrier officials. Violation of such rights cannot be regarded lightly. The claim must be sustained except as hereafter noted.

It will be noted that claimant was not dismissed but only disqualified from one position. She had the right to bid for other positions but apparently chose not to do so. Rule 47 (g) provides for deduction of earnings in other employment in computing compensation for time improperly held out of service. Consistency requires that deduction be made from any compensation due claimant by allowance of the claim, not only of earnings in other employment, but also what she could have earned by accepting other available and suitable positions in Carrier's employ.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of July, 1955.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 7088

Docket No. CL-7094

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: The Baltimore and Ohio Railroad Company.

Upon application of the representatives of the employes involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3—First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made.

The interpretation placed upon the award by the Carrier is correct. The intent was to deduct from the pay lost as Rate and Bill Clerk the money the claimant could have earned by the exercise of her seniority on other positions.

The fact that the Carrier did not utilize Rule 31 (d) to force her to accept work or lose her seniority does not affect that computation and we are not interpreting it except for the purpose of that computation.

Referee Dudley E. Whiting, who sat with the Division as a member when Award No. 7088 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1957.