

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it removed Drawbridge Engineer David Abraham from service on April 25, 1962, without benefit of a fair and impartial investigation.

(2) Claimant David Abraham be restored to his former position with seniority, vacation and other rights unimpaired, and that he be reimbursed for all monetary loss suffered because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: Rule 22(a) of the effective Agreement between the parties provides:

"RULE 22—DISCIPLINE AND APPEAL

(a) An employe who has been in service more than 30 days shall not be disciplined or dismissed without fair and impartial investigation, at which investigation he may be assisted by representatives of his choice. He may, however, be held out of service pending such investigation, and such holding from service shall not be deemed a violation of the principle of fair and impartial investigation and appeal. The date for the investigation shall be fixed within ten days after the date charged with the offense or held from service. A transcript of statements taken will be made and a copy furnished the employe or his representative upon request. Decision will be rendered within 15 days after completion of the investigation unless an extension of time is agreed to."

At approximately 11:00 P.M. on April 24, 1962, the day prior to the date of the grievance, the Carrier's drawbridge was opened for river traffic by the Claimant. During this operation, the drawbridge was damaged to the extent of a broken keyway and coupling on a four and one-half inch driving shaft.

The Claimant was given a letter at the close of his tour of duty that day, the text of which reads as follows:

"You are hereby taken out of service effective at 7:00 A. M. April 25, 1962, and are disqualified as a Drawbridge Engineer.

/s/ B. W. Merrill
Supervisor of Bridges
and Buildings

cc: L. J. Goodman"

The record clearly shows that on reflection the Claimant's supervisor decided that his initial notice might have been construed as a letter assessing dismissal. He then wrote the following letter to the Claimant dated April 26, 1962, which he hand delivered to him at his home in Cleveland, Ohio on April 27, 1962:

"Please disregard my letter of April 25, 1962.

You are withheld from service pending an investigation into the damage to Bridge No. 210.21 and the delay to Railroad and River traffic on the night of April 24, 1962.

Yours truly,

/s/ B. W. Merrill
Supervisor of Bridges
and Buildings"

A third letter was sent to the Claimant by registered mail, also dated April 26, 1962, notifying him of a formal investigation into the damage of the bridge and requiring him to attend said investigation on May 1, 1962. This letter read as follows:

"Please arrange to attend an investigation to be held in the Bridge and Building gang headquarters building at Lorain, Ohio, on Tuesday, May 1, 1962, at 10:00 A. M., E.S.T., to determine your responsibility, if any, for the damage to Drawbridge No. 210.21 and for the delay to Railroad and River traffic when Drawbridge was opened at approximately 11:00 P. M. on Tuesday, April 24, 1962.

Please arrange to be present.

It is your privilege, under the rules, to be assisted at the investigation by representatives of your choice and to arrange for the attendance of any witnesses whom you desire.

Yours truly,

/s/ B. W. Merrill
Supervisor of Bridges
and Buildings

cc: Mr. D. J. White
Mr. L. J. Goodman
Mr. H. C. Dodd"

There is no question that the second and third letters fully complied with the provisions of Rule 22 of the current bargaining Agreement between the parties and the preponderance of the evidence establishes that said letters were delivered as contended by the Carrier.

The investigation was held as scheduled and conducted by the Division Engineer on May 1, 1962. The Claimant was accompanied by the General Chairman, who instructed him not to testify concerning the substantive nature of the charges because the Claimant had been discharged in violation of Rule 22 of the Agreement on April 25, 1962, and that said action had not been cured by the later correspondence from the Carrier to the Claimant.

The investigation was closed without substantive testimony from the Claimant or other witnesses called on behalf of the Carrier. Nevertheless, the Claimant was notified on May 14, 1962, that he had been held responsible for the damage to the drawbridge and had been suspended for twenty (20) days retroactively. Said period ran concurrently from the date of the initial action taken by the supervisor to the date that the investigation was completed.

Furthermore, the Claimant also received another letter from the Carrier advising him that he was withheld from service pending an investigation for refusing to answer questions directed to him at the first investigation on May 1, 1962.

At the second investigation on May 22, 1962, the Claimant again on the advice of his General Chairman, refused to answer any substantive questions and left the hearing room with his representative. He was advised on June 1, 1962, that he had been discharged for insubordination because of his refusal to answer questions addressed to him at the initial investigation.

The two basic issues in this dispute to be resolved are as follows:

- (1) Did the notice to the Claimant by his supervisor on April 25th constitute dismissal in violation of Rule 22 of the Agreement?
- (2) If such notice constituted dismissal of the Claimant, was it effectively rescinded by the letter dated April 26th from the supervisor advising the Claimant to disregard the earlier letter?

The Brotherhood contends that the Claimant was in fact, dismissed when he was removed from his position at the close of his tour of duty on April 25, 1962, and thereafter denied the right to perform service in any capacity. The Carrier cites the fact that the Claimant was qualified not only as a drawbridge engineer, but also as a carpenter. The conclusion reached in this connection by the Carrier is that the Claimant was only disqualified as a drawbridge engineer, one of two craft rights he held and that his supervisor only intended to relieve him of such responsibilities. Thus, the action taken could not be construed as a dismissal from service.

The language of the April 25th letter is very clear and precise. Two separate actions were taken by the Carrier; namely, the Claimant was dismissed from service and furthermore disqualified as a Drawbridge Engineer. We find the assertion by the Carrier that the Claimant still might be eligible for a position as a carpenter because of his craft rights to be irrelevant.

The Board having found that the Claimant was discharged on April 25th by the Carrier, also finds that the initial action was in violation of Rule 22 as alleged by the Brotherhood. Despite the Carrier's prompt efforts to rectify a serious violation of its Agreement between the parties, the proper action would have been to reinstate Claimant effective April 25, 1962, by paying him any loss of wages caused by the violation and then giving a notice of suspension. (Awards 2806, 3857 and 7831.)

The Board concurs with the position taken by the Carrier that it has no jurisdiction to look beyond the alleged violation which occurred on April 25, 1962 and ended, following the investigation, with the Carrier's letter of May 14, 1962, assessing the Claimant with a twenty day suspension. (Awards 6954, 8426, 10904 and 11006.) Therefore, the Board makes no determination with respect to the merits of the charges filed against the Claimant in connection with the operation of the drawbridge other than to note that no substantive testimony was obtained from Claimant and other witnesses at the investigation on May 1, 1962.

The Board does find that the investigation the Carrier attempted to hold after the Claimant was dismissed, was not authorized by Rule 22 and was of no force or effect so far as the Claimant was concerned.

The Claimant should be restored to service with seniority, vacation and other rights unimpaired except that compensation for all wages shall be limited to the period from April 25 to May 1, 1962, the period between the violation of the Agreement and invalid investigation under Rule 22 of the current Agreement.

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 Carrier violated the Agreement in accordance with Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.