

Award No. 5055

Docket No. 4881

2-SOU-EW-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the terms of the controlling agreement, the Carrier unjustly dismissed Telephone Maintainer J. R. Parrish from service on May 11, 1964.

2. That accordingly the Carrier be ordered to restore Telephone Maintainer J. R. Parrish to service with his seniority rights unimpaired and pay for all time lost from May 11, 1964, until restored to service, including all vacation rights, and all premiums paid on his hospitalization and insurance benefits during the period he is withheld from service.

EMPLOYEES' STATEMENT OF FACTS: Telephone Maintainer J. R. Parrish, hereinafter referred to as the claimant, was regularly employed by the Southern Railway System, hereinafter referred to as the carrier, with a seniority date of June 1, 1952. His headquarters were at Memphis, Tennessee, with assigned territory from Memphis, Tennessee, to Iuka, Mississippi.

On January 20, 1964, claimant received the following letter:

“Memphis, Tenn.
January 20, 1964

Mr. James R. Parrish:

You are hereby notified that your service as telephone maintainer is terminated for failure to protect your assigned territory on January 20, 1964.

E. W. Neel
Supervisor Communications

/s/ J. R. Parrish
acknowledged”

Also see the following additional awards of the Fourth Division:

257	401	677	844	978	1102	1218
264	574	755	899	1008	1124	1241
337	622	796	901	1048	1152	1268
375	671	804	912	1081	1201	1270

The charge against Mr. Parrish and his dismissal having been sustained by the evidence adduced at a fair and impartial hearing afforded him at his request in accordance with the agreement, carrier acted in good faith without bias or prejudice, in dismissing him. There is no evidence of arbitrary or capricious judgment on the part of the carrier. In making its decision in this case, the board should follow the principles of the above quoted awards.

CONCLUSION: Carrier has proven in the record before the Board that:

(a) Claim presented to the Board is **not** the claim presented and handled on the property by the brotherhood. Furthermore, the several claims presented and partially handled on the property by the brotherhood were not presented and handled in the "usual manner" as required by the agreement in evidence, the Railway Labor Act and the board's rules of procedure. Thus, claim on behalf of Mr. Parrish is barred on several counts and should be dismissed by the board for want of jurisdiction in line with its many prior awards.

(b) Mr. Parrish was afforded a fair and impartial hearing at his request in accordance with rule 12 following his dismissal on January 20, 1964. The charge against him and his dismissal were fully sustained by the evidence adduced at the hearing. There is clearly no basis under the agreement in evidence for the claim which the brotherhood here attempts to assert on behalf of Mr. Parrish.

(c) There can be no showing that the dismissal of Parrish was arbitrary or capricious or in bad faith. Carrier has shown in the evidence of record that Mr. Parrish was not only disloyal and unfaithful as an employee, but he was dishonest as well. It has no place in its service for such an employee. Furthermore, Carrier's action in dismissing him is fully supported by the principles of awards of all four divisions of the board.

(d) The board is without authority to substitute its judgment for that of the carrier.

As the claim is barred the board has no alternative but to dismiss it for want of jurisdiction.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Parties to said dispute were given due notice of hearing thereon.

On the basis of all the evidence, the Board finds that the claim herein was legally barred and should be dismissed.

The Board finds that the Carrier in dismissing the claim was not arbitrary, unreasonable, capricious, discriminatory or unjust, and that under the rules and the law, said claim was barred and that the said Board has no jurisdiction to rule on it and therefore must dismiss said claim.

AWARD

As above set out, said claim is barred and is hereby dismissed for want of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1967.