

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA & SANTA FE RAILWAY CO.

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers, the Atchison, Topeka and Santa Fe Railway, that R. P. Bailey be reinstated to the position of printer-clerk in Amarillo, Texas, telegraph office to which he was regularly assigned when dismissed from the carrier's service April 21, 1939 and that he be paid for time lost."

EMPLOYEES' STATEMENT OF FACTS: "An agreement bearing effective date of December 1, 1938 as to rules of working conditions and rates of pay respectively exists between the parties to this dispute.

"R. P. Bailey, while employed as printer-clerk, Amarillo, Texas General Telegraph office was dismissed from service April 21, 1939 on a charge of insubordination on April 19, 1939, following which, on request of Mr. Bailey, formal investigation was held May 29, 1939."

CARRIER'S STATEMENT OF FACTS: "There is an agreement between the parties to this Docket, said agreement identified as Telegraphers' Schedule effective December 1, 1938, copy of which agreement is on file with the Board and is hereby referred to and made a part of this Docket. Article V of said Telegraphers' Schedule outlines the procedure with respect to the application of discipline.

"R. P. Bailey was employed in relay telegraph office at Amarillo. Among other duties he punched or perforated messages on the tape which operated the automatic transmitter. Automatic transmitters and printers are devices for the sending of messages automatically by passing between electric terminals of the transmitter of a strip of paper or tape that has been previously perforated or punched in conformity with a code or alphabet, the printer at opposite end of the circuit recording the message as sent. Mr. Bailey's first service as printer-clerk began February 24, 1931. He was then approximately 26 years of age.

"In letter of April 21, 1939 to R. P. Bailey, Manager W. C. Hankison of the relay telegraph office at Amarillo notified Mr. Bailey that he was removed from service account insubordination April 19, 1939. Mr. Bailey was then approximately 34 years of age, and had been employed for more than 8 years in the capacity of printer-clerk. An investigation, as required by Article V of the Telegraphers' Schedule effective December 1, 1938, was accorded Mr. Bailey on May 29, 1939; a transcript of the evidence taken thereat being attached, marked 'Carrier's Exhibit A.'"

OPINION OF BOARD: R. P. Bailey, while employed as printer-clerk, Amarillo, Texas, was dismissed from service April 21, 1939, on charge of insubordination on April 19, 1939. In accord with Article V of the Agreement, a formal investigation was held, May 29, 1939, which resulted in a decision substantiating the charge of insubordination.

We find in the record the following statement by Mr. E. K. Metzdorf, Assistant Superintendent of Telegraph:

"The charge, Mr. Bailey, is insubordination and not as to your ability as a printer-clerk."

As to be expected, the evidence at that hearing is conflicting, but a reading of the same convinces the Board this is a case where the two men involved both temporarily lost their temper and one was just as much to blame as the other. Assuming the testimony on behalf of the carrier to be true, taken in connection with the fact that his ability is not questioned and the further fact that the employe here involved had been in service for this carrier thirteen (13) years, and at the time involved his record shows to be clear, the Board thinks the punishment is unjust.

The Board thinks the circumstances are somewhat parallel to the facts in Award 789, decided by this Board without the aid of a referee. In that case the employe was restored to service without compensation and with the period out of service deducted from his seniority.

This Board recognizes it is the duty of the carrier to maintain discipline, but as before said, this employe only contributed to the incident involved, and it is the opinion of the Board that this employe should be restored to service without compensation for the time lost, but with all seniority rights restored.

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 employe involved in this dispute are respectively carrier and employe 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 claimant should be restored to service, with full seniority, but without pay for time lost.

AWARD

That R. P. Bailey shall be restored to service, with full seniority, but without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1940.